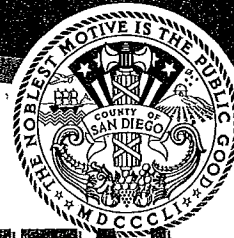


SAMPLE BALLOT & VOTER INFORMATION

# Presidential General Election

Tuesday, November 8, 2016

Polls open 7am » close 8pm



# SUPPLEMENTAL

Important Election  
Information  
Measures C & D



Scan to check the status  
of your registration, polling  
place and mail ballot



City of San Diego

## **VOTING PROVISIONALLY. WHAT IS IT? ONLY USE IT AS A LAST RESORT.**

As a registered voter in San Diego County, provisional voting protects your ability to vote. If you can't make it to your poll, you forget to bring your mail ballot to the poll, or your name is not on the voter list, it is your right to receive a provisional ballot. But be prepared to spend some time filling out the form on the provisional envelope. Also, if you vote provisionally outside your assigned voting precinct, you may not be voting on all the contests you are eligible to vote on. Here's how to avoid unnecessary provisional voting on Election Day:

**Go to your ASSIGNED polling place:** Look up your assigned poll at [sdvote.com](http://sdvote.com).

**Surrender Your Mail Ballot:** If you decide to vote at your ASSIGNED polling place instead of by mail, you should BRING your mail ballot with you to the polls to be SURRENDERED.

**Vote and Return Your Mail Ballot:** Mail promptly, or deposit your completed mail ballot at a drop-off location PRIOR to Election Day. See drop-off locations in your packet or online: [sdvote.com](http://sdvote.com).

### **About this SUPPLEMENTAL Pamphlet**

All registered voters within the City of San Diego are receiving this SUPPLEMENTAL pamphlet as an addition to the standard Sample Ballot & Voter Information pamphlet for the November 8, 2016 Presidential General Election. This supplement contains the full text of Measures C & D; and includes their Ballot Question, Official Title and Summary, Impartial Analysis, Fiscal Impact Statement, Argument In Favor, and Argument Against. You may also view the full text of these measures online at [www.sdvote.com](http://www.sdvote.com).

This supplemental pamphlet was printed and mailed separately to ensure you receive timely information related to the election.

★ ★ ★ ★ ★ VOTE 2016 ★ ★ ★ ★ ★

# CITY OF SAN DIEGO

(This Measure will appear on the ballot in the following form.)

## MEASURE C

**DOWNTOWN STADIUM INITIATIVE.** Should the measure be adopted to: increase San Diego's hotel occupancy tax by 6% to build a City-owned downtown professional football stadium and convention center project, and fund tourism marketing; effect the project financing, design, construction, use, management, and maintenance, including a \$650,000,000 contribution and 30-year commitment by a professional football entity; end Tourism Marketing District assessments; adopt a development ordinance, and related land use, sign, and zoning laws?

This measure's approval threshold could be affected by legal issues currently before the California Supreme Court.

### OFFICIAL TITLE AND SUMMARY

#### BALLOT TITLE

Tax and Downtown Stadium/Convention Center Initiative: Transient Occupancy Tax Increase for Combined Downtown Stadium and Convention Center Project and Tourism Marketing, and Related Land Use and Development Regulations

#### BALLOT SUMMARY

This measure would obligate the City of San Diego to acquire the land for, and build, a downtown convention center and professional football stadium. The project would be financed through a 6% rate increase in the transient occupancy tax, and a \$650,000,000 contribution by a professional football entity. The City would be authorized to issue bonds to finance the project, supported by the new tax revenue. The measure contemplates the City's use of a joint powers authority or a City corporation to own, finance, develop, and construct the project.

If approved, the measure would change the City's Downtown Community Plan and land development regulations to exempt the project from existing regulations, provide new regulations, and accommodate a wide range of commercial, sports and entertainment uses. The measure would allow outward-facing advertising signs and billboards, large electronic message boards, and other signs, lighting and noise levels not currently permitted by the City's regulations.

The football stadium would have 65,000 seats, expandable to 75,000. The convention center would have 385,000 square feet of meeting space.

The measure would end Tourism Marketing District assessments, and allow new tax revenues to be used for tourism marketing and promotion.

## CITY ATTORNEY'S IMPARTIAL ANALYSIS

The tax increase provisions can be summarized as follows: If adopted, this measure would increase the City's transient occupancy tax rate by 6% for hotels, recreational vehicle parks and campgrounds, for a total tax rate of 16.5%, effective January 1, 2017. The new revenue would be paid into special funds in the City's treasury: 5/6 of the new revenue would be paid into a new convention center and stadium fund; 1/6 of the new revenue would be paid into the existing San Diego Tourism and Marketing Fund. The tax rate would be reduced by 3% if the proposed stadium is not complete within two years after home games for professional football end at Qualcomm Stadium, or if all City-issued bonds and other financings are repaid, or after 50 years, or if the professional football entity has not, by January 1, 2027, paid its contribution and entered into an agreement not to relocate and a lease. In that event, two-thirds of the revenue, based on the reduced 3% rate, would be dedicated to tourism and convention center marketing.

This measure was placed on the ballot by the City Council after voter signatures qualified the initiative measure for the ballot.

This citizens' initiative measure would amend the City's Downtown Community Plan and the San Diego Municipal Code to provide for the development, financing, management, and use of a downtown convention center and professional football stadium project (the Project) on a 10-block area east of Petco Park (the Site), and require the City to:

- Create a Planned District on the Site and set City policies, criteria, permitting procedures, and regulations that apply only to the Project, including:
  - Working proactively for removal of bus yards from the Site;
  - Developing the Project as part of a commercial, sports, and entertainment district with a wide range of permitted uses, including live entertainment, alcohol sales, broadcasting, and special events for day and night-time use;
  - Allowing uninterrupted development across the Site, and routing vehicle, bicycle, and pedestrian traffic around the Site;
  - Favoring off-site and shared parking and mass transit use;
  - Exempting the Project from existing development procedures and regulations including, for example, parking, noise, and lighting;
  - Establishing new design regulations including, for example, for setbacks, height, light, noise standards, green building, parking, and including sign regulations to allow large outward-facing, lighted advertising and electronic message signs; and
  - Requiring the City to issue a development permit, or phased permits, without a public hearing, based solely on whether the application complies with the new regulations.
- Increase the City's Transient Occupancy Tax (TOT). This tax is paid by guests at hotels, recreational vehicle parks and campgrounds. This tax is itemized on guests' bills, collected from guests by the operator and turned over to the City. The current tax is 10.5%. This measure would increase TOT to 16.5%, and end Tourism Marketing District assessments. New tax revenue would be deposited in special trust funds for:
  - Financing costs, including debt service on bonds issued by the City;
  - Pre-construction costs incurred by the City, including land acquisition, architecture and engineering, project management, and legal costs;

### CITY ATTORNEY'S IMPARTIAL ANALYSIS (CONTINUED)

- All costs of developing and constructing a convention center building designed and sized to house a professional football stadium, including land acquisition and infrastructure;
- Development and construction of the stadium as a joint facility (\$350 million);
- Tourism and convention center marketing;
- Operating and maintenance reserves; and
- Project operations, maintenance, capital improvements and repairs.

The measure also would:

#### • Condition use of construction funds on:

- Contributions by a professional football entity for stadium construction and infrastructure costs up to \$650,000,000. This funding can be paid in cash, using revenue from seat license sales, sponsorships or other future revenues, from construction loan proceeds, or as pre-development expenses incurred by the entity.
- A 30-year commitment by a professional football entity to not relocate and to use the stadium on set terms.

Authorize the City to create a non-profit corporation or joint powers authority to own and assist the City in financing, developing, constructing, and operating the Project.

Under current law, exempt the Project from environmental review under the California Environmental Quality Act.

## FISCAL IMPACT STATEMENT

This measure increases the City's transient occupancy tax (TOT) from 10.5% to 16.5%. The measure eliminates the existing 2% assessment hotels charge customers to a fund a tourism marketing district (TMD).

Based on current TOT revenue projections, a 6% increase would initially generate \$120 million annually. 5% of the 6% increase generates \$100 million annually, and would fund construction and operations/maintenance (O&M) of a convention center/stadium facility (Facility) in the East Village. The remaining 1% generates \$20 million annually for tourism marketing.

Depending on the combination of cash and TOT-supported revenue bonds used, the 5% TOT increase could provide between \$1.3 and \$1.6 billion for land acquisition and Facility construction. The Chargers must provide an additional \$650 million for the stadium-only portion of the Facility, and enter into a lease to play at the stadium for at least 30 years.

While not stated in the measure, the Chargers have estimated Facility costs at \$1.8 billion:

- \$200 million – land acquisition (TOT funded)
- \$600 million – construction of convention center (TOT funded)
- \$350 million – construction of integrated joint use portion (TOT funded)
- \$650 million – construction of stadium (privately funded)

Project expenses may be understated. Land costs could increase with needs such as retaining 1,300 parking spaces near Petco Park as required by the City's contract with the Padres. Costs for capital infrastructure (e.g. road improvements); MTS bus yard relocation; environmental remediation; and trolley enhancements are not identified. In January 2018, funding commitments to the Facility would adjust annually by a construction cost index. Bond financing costs may also be higher than anticipated given the possibility of rising interest rates.

Following construction, remaining TOT must fund \$29 million annually in O&M and capital renewal, and a \$25 million reserve. Up to 1% of TOT revenue would augment the 1% already dedicated to tourism marketing. TOT funds remaining after funding all Facility and tourism marketing costs would go to the City's General Fund. Actual project costs, financing costs, and TOT revenue growth will significantly impact when, how much and whether any revenue would flow to the City's General Fund. If TOT revenues cannot cover stipulated requirements in a given year, General Fund support may be necessary, reducing funding available for other public purposes.

San Diego's current effective TOT rate (the combined TOT and TMD) is 12.5% - below the average of other comparable cities. A 16.5% TOT rate would put San Diego among cities with the highest TOT rates, potentially impacting hotel occupancy.

The 16.5% TOT rate would be reduced to 13.5% upon any of the following:

- The earlier of 50 years or full repayment of Facility bonds;
- The Chargers stop playing home games in Qualcomm Stadium for two consecutive years prior to Facility construction; or
- Specified project requirements cannot be satisfied within 10 years.

Once the TOT increase is reduced from 16.5% to 13.5%, 2/3rds of the remaining 3% TOT increase would be allocated to tourism marketing, and 1/3rd to provide ongoing support for the Facility.

## ARGUMENT IN FAVOR OF MEASURE C

**It will be more than a football stadium.**

It will be a multi-use facility that will serve as an expanded convention center, a stadium for the Chargers and a world-class events center.

It will be a home for international soccer, collegiate basketball championships, extreme sports competitions, concerts and political conventions.

The ground level will be filled with coffee shops, retail spaces, a museum and an incubator for start-up businesses.

And it will also be a spectacular site for America's national holiday: The Super Bowl.

**No new or increased taxes will be imposed on San Diego residents.**

The Chargers and the NFL will be contributing \$650 million in private investment.

The rest will be paid through an increase in the hotel tax paid by visitors to San Diego.

Residents of the City of San Diego who don't stay in a hotel room in the City will not pay for the development or operation of this facility.

**The City will oversee the design, construction and operation of the facility, not the Chargers.**

The measure plans for a new public governing structure or Joint Powers Authority to oversee the design, construction, operation and maintenance of the new facility and manage the hotel taxes and the bonds to complete the development.

Again, no general fund dollars are designated to finance or operate any part of the project.

Even more, the initiative would relieve existing obligations at Qualcomm Stadium that are currently paid out of the general fund totaling \$15 million per year.

**The facility will create new local jobs.**

The facility will create 17,000 jobs during its construction.

In addition, between the Chargers' operations and other events at the facility, 3,000 permanent jobs will be created in San Diego.

JERRY SANDERS  
President & CEO, San Diego Regional  
Chamber of Commerce

CAROL KIM  
Boardmember, Middle Class Taxpayers  
Association

JUAN VARGAS  
Member of Congress

NICHOLAS SEGURA  
San Diego Building & Construction Trades  
Council

JOHN THOMSON  
Retired Deputy Fire Chief

## ARGUMENT AGAINST MEASURE C

Vote No on a Downtown Stadium - Jobs and Streets First!

*Dean Spanos's Measure C is a Bad Deal for San Diego*

### Raises Taxes by More Than \$1 Billion

It is a massive tax increase that should be spent on repairing streets, hiring 911 dispatchers and fully funding after-school programs. Instead of paying for those services, we would be raising taxes to help fund a rent-free stadium for Dean Spanos and his billion-dollar corporation. Measure C would be one of the largest tax increases in city history and the largest bond offering.

### Does Not Require Any New Parking or Traffic Improvements

Getting in and out of Downtown San Diego is already difficult. So is finding parking. Dean Spanos's stadium would make a bad situation worse. His tax measure exempts him from providing parking spaces required under the law. So if Measure C passes Dean Spanos would receive a special benefit. It means San Diego taxpayers would be forced to pay for parking and infrastructure to reduce traffic.

### Does Not Protect San Diego Taxpayers

An independent analysis commissioned by the City found the public contribution could be \$2.3 billion over 30 years. Four independent analyses all reached the same conclusion - the proposed hotel tax increase might not cover costs. The City's Independent Budget Analyst said low hotel tax revenues could prompt the City to cover stadium costs with money normally used for public safety and other core services.

### Measure C Threatens San Diego's Tourism Economy and Jobs

Comic-Con and other large conventions are opposed to the measure. When we lose conventions, tourism declines. When tourism declines, we lose jobs, our economy suffers and tax revenues the city relies on for street repairs and other services fall.

The City has more important priorities. **Vote no on a bad deal!**

HANEY HONG  
San Diego County  
Taxpayers Association  
President and CEO

JULIE MEIER WRIGHT  
Former California Secretary  
of Trade & Commerce and  
Retired CEO of San Diego  
Regional Economic  
Development Corporation

VICE ADMIRAL PETER HEKMAN  
US Navy (RET.)

DAVID ALVAREZ  
Councilmember

CHRIS CATE  
Councilmember



**BALLOT MEASURE FULL TEXT**  
**NOTICE OF INTENT TO CIRCULATE PETITION**

Notice is hereby given of the intention of the person whose name appears hereon to circulate a petition within the City of San Diego for the purpose of adopting the legislative policy of the City to provide for the financing, design, development, construction, operation, maintenance, and management of an integrated convention center expansion and stadium for convention, civic, professional football, and other sports and entertainment events within Downtown San Diego.

Be it ordained by the People of the City of San Diego:

**Section 1. Title.**

This initiative measure ("Initiative") shall be known and may be cited as the "San Diego Integrated Convention Center Expansion/Stadium and Tourism Initiative."

**Section 2. Findings and Declarations.**

The People of the City of San Diego find and declare the following:

1. The People of the City of San Diego ("City") desire to encourage the development of a convention center expansion, tourism, and sports and entertainment district within Downtown San Diego, furthering downtown's unique role as the regional center for the City and San Diego County;
2. The People of the City desire to encourage the development of an integrated convention center expansion and stadium for convention, civic, professional football, and other sports and entertainment events within Downtown San Diego at a location in the southeastern portion of the East Village neighborhood bounded by K Street on the north, 16<sup>th</sup> Street on the east, Imperial Avenue on the south and 12<sup>th</sup> Avenue on the west (the "Property") as reflected on the site map attached as Exhibit A hereto;
3. The People of the City desire to create a new plan for the Property that would provide a feasible and fiscally and environmentally responsible path for the development and operation of an integrated convention center expansion and stadium to complement the existing convention center, baseball stadium, and tourism facilities, which will further enhance downtown San Diego's position as a premier convention, tourism, and sports center;
4. The People of the City desire to exercise our reserved power of initiative under the California Constitution and the City of San Diego Charter to establish for the City an integrated convention center expansion and stadium and related uses at the Property ("Convention Center Expansion and Stadium Project");
5. The People of the City desire that the Property be able to be used for the development and operation of the Convention Center Expansion and Stadium Project, which can be used for conventions, civic events, exhibitions, trade shows, conferences, meetings, professional and collegiate football games, professional and collegiate soccer games, other professional and amateur sporting events, banquets, pageants, patriotic celebrations, public and private gatherings, entertainment, concerts, festivals, fairs, and other similar events; media and broadcasting facilities; athletic facilities; retail, food and beverage facilities; signage; and other permitted uses as provided for in this Initiative;
6. The Convention Center Expansion and Stadium Project will provide economic development opportunities including creating new construction and permanent jobs in the City, and generating new conventions, increased tourism, and increased economic activity, including generating new business for local hotels;
7. In order for the Convention Center Expansion and Stadium Project to be undertaken in a financially sound manner, the Initiative increases the existing Transient Occupancy Tax, which is paid for by persons staying in hotels, motels, and other lodging establishments in the City, and establishes a Downtown Convention Center Expansion and Stadium Fund to pay for the development and construction of the Convention Center Expansion and to pay certain incremental costs of the Stadium resulting from an integrated Convention Center Expansion

## BALLOT MEASURE (continued)

and Stadium Project, and also establishes a San Diego Tourism and Marketing Fund to promote tourism and conventions for the City;

8. As provided in this Initiative, the Transient Occupancy Tax is increased by an additional six percent (6%) and the new revenues are dedicated to special trust funds, the Convention Center Expansion and Stadium Fund and the San Diego Tourism and Marketing Fund, as provided for by this Initiative;
9. In connection with the construction of the Convention Center Expansion and Stadium, the Initiative requires that a private sector contribution of six hundred and fifty million dollars (\$650,000,000) be provided and that a professional football team enter into a covenant and agreement agreeing not to relocate for a period of thirty (30) years and agreeing to play substantially all of its home games at the Stadium;
10. The Initiative expressly prohibits the payment of any costs by the City to construct and operate the Stadium except for certain costs resulting from the integrated nature of the Convention Center Expansion and Stadium Project and as expressly provided for in this Initiative, and prohibits the payment by the City of any cost overruns with respect to the Stadium construction;
11. As provided in this Initiative, it is beneficial to amend the General Plan of the City and the Land Development Code to provide for new land use designations, zoning and development standards for the Property and establish a new Chapter to the Downtown Community Plan and a new Planned District Ordinance to permit the development, construction, operation, and maintenance of the Convention Center Expansion and Stadium Project;
12. The Convention Center Expansion and Stadium Project provided for in this Initiative is compatible with surrounding commercial and residential uses; and the aesthetic and visual qualities of the City; the design and development restrictions set forth in this Initiative together with the environmental design features included in this Initiative are intended to address the potential environmental issues associated with the construction, operation, maintenance, management, and financing of the Convention Center Expansion and Stadium Project;
13. Implementation of this Initiative will protect the public health, safety and welfare, and the quality of life for the People of the City by requiring that the Convention Center Expansion and Stadium Project comply with a program of environmental design features as included in this Initiative to avoid or reduce potential environmental issues; and
14. By signing this Initiative petition, the People of the City directly express their intention to make the ultimate decision on major changes in allowable land use and economic development within the City.

### **Section 3. Statement of Purpose.**

The People of the City of San Diego further find and declare that our purpose and intent in enacting the Initiative is to:

Adopt the legislative policy of the City to provide for the financing, design, development, construction, operation, maintenance, and management of the Convention Center Expansion and Stadium Project, and expand tourism and conventions in the City and, thereby, provide economic development opportunities associated with the project, including creating jobs, increasing tourism, and other economic activity in the City as being in the best interest of the City.

### **Section 4. Amendment of Downtown Community Plan.**

This Section of the Initiative addresses the Goals and Policies applicable to the Convention Center Expansion and Stadium Project within the Property.

The City's Downtown Community Plan is hereby amended to add a new chapter, Chapter 15 and its Appendix 15A, that provides for the development of an integrated convention center expansion and stadium for professional football and other sports and entertainment, together with related uses within the Property.

## BALLOT MEASURE (continued)

Chapter 15 and its Appendix 15A will be applicable if an integrated convention center expansion and stadium is to be developed within the Property. If an integrated convention center expansion and stadium is to be developed within the Property, Chapter 15 and its Appendix 15A will be the only Chapter of the Downtown Community Plan to apply. If an integrated convention center expansion and stadium is not to be developed within the Property this Chapter 15 and its Appendix 15A shall have no force and effect.

A. New Chapter 15 and its Appendix 15A are hereby added to the Downtown Community Plan as follows (new text in shown in underlined print for ease of reference):

### Chapter 15 – Convention Center Expansion and Stadium Mixed-Use District

#### 15.1 – Introduction and Overview

This Chapter 15 allows the development of an integrated convention center expansion and stadium for professional football and other sports and entertainment, together with related uses, in a southeastern portion of the East Village neighborhood. This area, known as the Convention Center Expansion and Stadium Mixed-Use District, includes those properties bounded by K Street on the north, 16<sup>th</sup> Street on the east, Imperial Avenue on the south, and 12<sup>th</sup> Avenue on the west as shown in Figure 15-1.

FIGURE 15-1

#### CONVENTION CENTER EXPANSION AND STADIUM MIXED-USE DISTRICT



#### 15.2 – Vision and Planning

##### 15.2.1 – Scope and Purpose

Chapter 15 is comprehensive in its scope to facilitate the development of a new integrated convention center expansion and stadium for professional football and other sports and entertainment, together with related uses, and that serves the following purposes:

## BALLOT MEASURE (continued)

- Establishes a new Land Use Classification known as Convention Center Expansion and Stadium Mixed-Use;
- Establishes a land use vision, designation, and development policies for the Convention Center Expansion and Stadium Mixed-Use District as a component of the Downtown Community Plan;
- Provides for implementing actions to accomplish this land use vision;
- Establishes the relationship of Chapter 15 to the other chapters of the Downtown Community Plan and the Land Development Code, including but not limited to, Planned District Ordinances; and
- Provides the framework for the detailed plans and implementing programs such as the Convention Center Expansion and Stadium Planned District.

Chapter 15 covers a wide range of planning issues including but not limited to land use, urban design and urban open space, transportation, historic resources, arts and culture, and health and safety for the Convention Center Expansion and Stadium Mixed-Use District.

### 15.2.2 – Relationship to General Plan Elements, Planned District Ordinances, and Design Guidelines

Chapter 15 of the Downtown Community Plan allows the development of an integrated convention center expansion and stadium for professional football and other sports and entertainment, together with related uses. This Chapter will be applicable if an integrated convention center expansion and stadium is to be developed within the boundaries described in this Chapter. If an integrated convention center expansion and stadium is to be developed within the area covered by this Chapter, this Chapter 15 and its Appendix 15A shall be the only chapter of the Downtown Community Plan to apply. If an integrated convention center expansion and stadium is not to be developed within the area covered by this Chapter, this Chapter 15 and its Appendix 15A shall have no force and effect.

This Chapter is consistent with other elements of the San Diego General Plan including the Strategic Framework, Land Use and Community Planning Element, Mobility Element, and other elements. This Chapter focuses new development in mixed-use transit nodes and furthers Downtown as the regional center for the City and San Diego County.

This Chapter provides the vision, policies, and development standards for a unique Planned District for this area of Downtown to implement this Chapter. Similar to this Chapter of the Downtown Community Plan, if an integrated convention center expansion and stadium is to be developed within the area covered by this Chapter, then the Convention Center Expansion and Stadium Planned District implementing this Chapter will be the only Planned District to apply and will supersede any other zoning including without limitation any other Planned Districts. The Convention Center Expansion and Stadium Planned District also contains design guidelines that shall be the only design guidelines for development if an integrated convention center expansion and stadium is to be developed in this area.

The Convention Center Expansion and Stadium Mixed-Use District is located outside of the Coastal Zone and the San Diego Unified Port District.

### 15.3 – Land Use

#### 15.3.1 – Convention Center Expansion and Stadium Mixed-Use District Land Use

The Convention Center Expansion and Stadium Mixed-Use District is in the southeast portion of the East Village neighborhood and includes those properties bounded by K Street on the north, 16<sup>th</sup> Street on the east, Imperial Avenue on the south, and 12<sup>th</sup> Avenue on the west as shown on Figure 15-1. The General Plan designates the properties within the Convention Center Expansion and Stadium Mixed-Use District as Multiple Use with a Downtown designation, which is intended to provide a range of single and multiple uses in a setting of high intensity appropriate to Downtown's unique role as the regional center. The integration of commercial, residential, civic, institutional, and open space is emphasized.

The Convention Center Expansion and Stadium Mixed-Use land use designation is intended to create a regional convention center expansion, tourism, and sports and entertainment district patronized by local residents as well as visitors that will further the goals and policies of enhancing Downtown as the regional center for the City and County.

## BALLOT MEASURE (continued)

Mixed uses in the Convention Center Expansion and Stadium Mixed-Use District will accommodate convention center expansion, major sporting and event facilities, and visitor attractions. The classification contains a broad array of other uses, including but not limited to, eating and drinking establishments; cultural uses; athletic training and medical treatment facilities; retail stores including athletic team stores; motion picture, television, and other media broadcasting studios and facilities; and accessory offices, as well as other accessory and ancillary uses. The full range of uses will be specified in the Convention Center Expansion and Stadium Planned District.

### Goals: Structure and Land Use

15.3.1-G-1 Provide a land use and development framework to guide the area's transformation into a regional convention center, tourism, and sports and entertainment district patronized by local residents as well as visitors.

15.3.1-G-2 Provide for a variety of uses that will foster a lively and active pedestrian district during the day and night throughout the year, not only when activities and events occur in the convention center expansion and stadium.

### Policies: Structure and Land Use

15.3.1-P-1 Permit and encourage the multi-block development of an integrated convention center expansion and stadium for professional football and other sports and entertainment, together with related uses.

15.3.1-P-2 Allow a diverse array of commercial uses, retail uses, and eating and drinking establishments in a unified development that fosters pedestrian activity at the street level intended to be patronized by local residents as well as visitors, and that generates economic development and expanded business opportunities.

### 15.3.2 Development Intensity and Buildout

#### Development Intensity and Buildout

This sub-chapter establishes the intensity of development within the District. Intensity is measured as floor area ratio (FAR), calculated by dividing gross floor area by total lot area of the development site including any public right-of-way that may be vacated, i.e. the average FAR for an entire site. The implementing zoning regulations in the Convention Center Expansion and Stadium Planned District shall define how gross floor area and FAR are calculated. If an integrated convention center expansion and stadium for professional football and other sports and entertainment is developed in the Convention Center Expansion and Stadium Mixed-Use District, the maximum development intensity shall be a 4.0 FAR excluding certain aspects of the development as stated below. The intensity and buildout of the stadium shall be limited by the seating capacity of the stadium. The convention center expansion shall include approximately three hundred eighty-five thousand (385,000) square feet in net floor area of exhibition halls, ballrooms, and meeting rooms, into which a stadium shall be integrated, which convention center facility may also include offices, restaurants, cafes, kitchen facilities, storage areas, parking, and other ancillary floor area, customarily part of a convention center facility. The stadium portion of the development shall have a permanent seating capacity of up to approximately sixty-five thousand (65,000) seats, including club seats, loge seats, suite seating and other premium seats, with expansion capability up to a maximum seating capacity of approximately seventy-five thousand (75,000) seats, including club seats, loge seats, suite seating and other premium seats.

#### Exclusions

Stadium. The gross floor area of the stadium and its accessory uses, including without limitation concourse and concession areas, locker rooms, training areas, meeting rooms, office, storage areas, and mechanical rooms shall be excluded from the calculation of the FAR.

Historic Resources. The gross floor area of a designated historic structure shall be excluded from the calculation of the FAR if the historic resource is rehabilitated or relocated and incorporated into the development.

Mechanical Penthouses. Mechanical penthouse areas shall be excluded from the calculation of the FAR when architecturally integrated into the overall building design.

Phantom Floors. Phantom floors shall be excluded from the calculation of the FAR.

## BALLOT MEASURE (continued)

Roof Decks. Roof deck areas shall be excluded from the calculation of the FAR, unless the perimeter walls enclosing the area exceed 6 feet in height for non-transparent materials or 12 feet in height for transparent materials.

Public Uses. Public safety facility areas shall be excluded from the calculation of the FAR.

Public Parking. All above-grade and below-grade parking areas shall be excluded from the calculation of the FAR.

Urban Open Space / Atria. Urban open space, atria and multi-level interior enclosed spaces and areas shall be excluded from the calculation of the FAR.

### Goals – Development Intensity and Buildout

15.3.2-G-1 Provide a maximum intensity to facilitate the development of an integrated convention center expansion and stadium for professional football and other sports and entertainment, together with related uses, including, but not limited to, retail and commercial uses, accessory athletic team uses, and eating and drinking establishments.

15.3.2-G-2 In addition to providing sufficient intensity to facilitate the regional convention center expansion, tourism, and sports and entertainment development, also establish development limits to ensure an appropriately sized development for an urban downtown site.

### Policies – Development Intensity and Buildout

15.3.2-P-1 Exclude the following from intensity calculation:

- Stadium and accessory uses.
- Historic resources rehabilitated or relocated that are incorporated into a unified development.
- Mechanical penthouses, phantom floors, and roof decks.
- Public safety facilities, above-grade and below-grade parking facilities, and urban open spaces, atria and multi-level interior enclosed spaces and areas.

15.3.2-P-2 Establish maximum intensity and buildout.

15.3.2-P-3 Work proactively with the transit agencies to prioritize the earliest possible relocation of the bus yards located within the four block area bounded by K Street, 16<sup>th</sup> Street, Imperial Avenue, and 14<sup>th</sup> Street to allow the redevelopment of the District with an integrated convention center expansion and stadium for professional football and other sports and entertainment, together with related uses.

### 15.3.3 – Neighborhood

The Convention Center Expansion and Stadium Mixed-Use District will be located between 12<sup>th</sup> Avenue and 16<sup>th</sup> Street in the southern portion of the Southeast sub-district of the East Village neighborhood. It will continue the tourism, sports and entertainment area created by Petco Park to the west, including a portion of the area included in the sport and entertainment district created in 1999, and is located immediately east and adjacent to new residential development between Park Boulevard and 12<sup>th</sup> Avenue. Across Imperial Avenue to the southwest is the 12<sup>th</sup> & Imperial Transit Center with trolley and bus service. The location is consistent with the Strategic Framework of the General Plan that calls for focusing new development in mixed-use transit nodes. The convention center expansion and stadium will provide a link between the Neighborhood Center between 14<sup>th</sup> and 16<sup>th</sup> Streets immediately across K Street to the north and the 12<sup>th</sup> & Imperial Transit Center to the southwest.

### Goal – Neighborhood

15.3.3-G-1 Create a regional convention center expansion, tourism, and sports and entertainment district patronized by local residents as well as visitors with a mix of convention center, commercial, retail, and sports and entertainment uses.

15.3.3-G-2 Develop an integrated convention center expansion and stadium for professional football and other sports and entertainment, together with related uses, that is a multi-use development that fosters daytime and nighttime use throughout the year that adds to the viability of the Neighborhood Center to the north of K Street.

## BALLOT MEASURE (continued)

15.3.3-G-3 Encourage the design of the integrated convention center expansion and stadium for professional football and other sports and entertainment, together with related uses, as a multi-use development with parking and other amenities that can be shared between uses and other adjacent projects to the extent feasible.

15.3.3-G-4 Pursue strategies that foster a vibrant regional convention center expansion, tourism, and sports and entertainment district while respecting adjacent neighborhoods, including but not limited to, Barrio Logan, Sherman Heights, Logan Heights, and Golden Hill.

### Policies – Neighborhood

15.3.3-P-1 Authorize a wide variety of permitted uses to create an active mixed-use development that enlivens the area.

15.3.3-P-2 Establish design and development standards that foster a unique district while being compatible with adjacent areas.

## 15.4 – Urban Design and Urban Open Space

### 15.4.1 – Street Grid and Views

The development of an integrated convention center expansion and stadium and related uses over the multi-block area will require the uninterrupted development of the District between K Street and Imperial Avenue and between 12<sup>th</sup> Avenue and 16<sup>th</sup> Street. This will require bicycle and vehicular routes to not cross the District and public right-of-ways within the District to be vacated. No designated view corridors occur within the Convention Center Expansion and Stadium Mixed-Use District. Existing development south of Imperial Avenue and Commercial Street precludes view corridors to the south of the District.

### Goal – Street Grid

15.4.1-G-1 Create a unified site for the development of a convention center expansion and stadium for professional football and other sports and entertainment, together with related uses.

### Policy – Street Grid

15.4.1-P-1 Allow an integrated convention center expansion and stadium for professional football and other sports and entertainment, together with related uses, to be developed over multiple blocks with the vacation of public right-of-ways while encouraging pedestrian and bicycle connections between the areas north of K Street, particularly the Southeast Neighborhood Center, with areas south of Imperial Avenue including the 12<sup>th</sup> & Imperial Transit Center.

### 15.4.2 – Streetscape and Building/Street Interface

The Convention Center Expansion and Stadium Mixed-Use District is intended to foster convention center expansion, tourism, and sports and entertainment patronized by local residents as well as visitors in a pedestrian-friendly manner that will encourage activity on the street and connections to adjacent areas of downtown. The streetscape should be consistent around the perimeter of the District to create a unified theme. The Convention Center Expansion and Stadium Planned District should contain specific provisions for building/street interface and providing for building articulation and limiting blank walls.

### Goals – Streetscape and Building/Street Interface

15.4.2-G-1 Enhance the Convention Center Expansion and Stadium Mixed-Use District through distinctive streetscape. Promote street trees and unified landscape treatment along the District's perimeter streets.

15.4.2-G-2 Envision streets as extensions of downtown's open space network, presenting opportunities to linger, stroll, and gather, rather than simply as traffic movement spines.

15.4.2-G-3 Encourage development along streets that offers a rich visual experience; is engaging to pedestrians; and contributes to street life, vitality, and safety.

### Policies – Streetscape and Building/Street Interface

15.4.2-P-1 Require new development to have a cohesive streetscape design.

## BALLOT MEASURE (continued)

15.4.2-P-2 Establish specific building/street interface requirements in the implementing Convention Center Expansion and Stadium Planned District that provide variety and modulation of street walls that emphasize pedestrian orientation.

15.4.2-P-3 Establish in the implementing Convention Center Expansion and Stadium Planned District requirements for the proposed development to undergo advisory design review.

### 15.4.3 – Urban Open Space and Linkage to Surrounding Neighborhoods

The Convention Center Expansion and Stadium Mixed-Use District should be encouraged to incorporate urban open spaces generally open to the public to help integrate the project with adjacent development to create spaces to linger and gather before and after events and throughout the year. The District is located between the envisioned Neighborhood Center north of K Street and the existing 12<sup>th</sup> & Imperial Transit Center to the southwest. The Transportation section below discusses pedestrian and bicycle connections to surrounding neighborhoods.

#### Goal – Urban Open Space and Linkage to Surrounding Neighborhoods

15.4.3-G-1 Encourage the inclusion of urban open space.

#### Policy – Urban Open Space and Linkage to Surrounding Neighborhoods

15.4.3-P-1 To the extent feasible, provide urban open spaces at the street level to create gathering spaces at primary entry points to the District as a way to create linkages with adjacent neighborhoods.

### 15.4.4 – Sustainable Development

In the context of downtown San Diego and the Convention Center Expansion and Stadium Mixed-Use District, sustainable development occurs at three levels: Planning, Urban Design, and Green Building

#### Goal – Sustainable Development

15.4.4-G-1 Promote sustainable development and design.

#### Policies – Sustainable Development

15.4.4-P-1 Allow mixed-use development that fosters efficient use of land.

15.4.4-P-2 Encourage walking, biking, and transit use to reduce auto-dependency.

15.4.4-P-3 Require street trees and encourage urban open spaces with trees and landscaping.

15.4.4-P-4 Encourage building design that meets the applicable state Green Building regulations and, to the extent feasible, exceeds the state Green Building regulations.

### 15.5 – Transportation

#### Streets and Passages

Development of the Convention Center Expansion and Stadium Planned Mixed-Use District will require routing vehicle traffic around the site and vacating public right-of-ways within the District. As discussed earlier in this chapter, the District is located between the envisioned Neighborhood Center north of K Street and the existing 12<sup>th</sup> & Imperial Transit Center to the southwest. It is recommended that the project design allow pedestrian and bicycle passages that do not cross through the District but provide linkages with surrounding neighborhoods and activity nodes. K Street on the northern perimeter of the District is designated a Green Street that should be continued along the eastern side of the District.

#### Goals – Transportation

15.5.1-G-1 Create pedestrian and bicycle links along the periphery of the District to surrounding neighborhoods.

15.5.1-G-2 Extend the City's Green Street network outside of the District.

15.5.1-G-3 Pursue strategies to reduce vehicle travel distances from the freeway to the District.

#### Policies – Transportation



## BALLOT MEASURE (continued)

15.5.1-P-1 To the extent feasible, provide pedestrian and bicycle passages along the periphery of the District to create linkages between the Neighborhood Center to the north, the 12<sup>th</sup> & Imperial Transit Center to the southwest, and neighborhoods south of Imperial Avenue.

15.5.1-P-2 The proposed Class III bicycle facility proposed for 14<sup>th</sup> Street should be relocated to the periphery of the District to provide a continuous connection. If feasible, connecting the bicycle facility within the District should be evaluated.

15.5.1-P-3 Encourage 16<sup>th</sup> Street to be improved as a Green Street.

### Parking

Providing parking at standard code rates for each of the uses would provide an oversupply of parking that would discourage transit use and other modes of transportation. Since most professional football games occur on Saturdays and Sundays, as do other sporting and entertainment events, when many offices and businesses are not open, a surplus supply of parking spaces would be available throughout the downtown area on many event days. Parking for the District should be provided on a shared-use basis and utilize on- and off-site parking as needed.

### Goal – Parking

15.5.2-G-1 Promote shared parking both on- and off-site with an appropriate quantity of parking to avoid an oversupply of parking.

### Policies – Parking

15.5.2-P-1 In the parking regulations in the Convention Center Expansion and Stadium Planned District, emphasize shared parking ratios.

15.5.2-P-2 Allow off-site and shared parking arrangements to maximize efficient use of parking resources recognizing the surplus supply of parking spaces available on many stadium event days.

15.5.2-P-3 Provide motorcycle and bicycle parking spaces in addition to automobile spaces.

## 15.6 – Historic Resources

### Local Historic Resource

The Wonder Bread Factory building located at 1441 L Street within the District is a designated local historic resource on the San Diego Register. Development of an integrated convention center expansion and stadium may require the relocation of the Wonder Bread Factory building, although integration of the façade into the convention center expansion is encouraged.

### Goal – Local Historic Resource

15.6.1-G-1 Encourage the preservation of the Wonder Bread Factory building façade if feasible.

### Policies – Local Historic Resource

15.6.1-P-1 If feasible, incorporate the Wonder Bread Factory building façade in the design of the convention center expansion either in its current location or elsewhere within the District.

15.6.1-P-2 The requirements of the Convention Center Expansion and Stadium Planned District shall provide the approval and authorization for the incorporation and/or relocation of the Wonder Bread Factory building façade. No additional review, approval or clearance related to the Wonder Bread Factory building shall be required.

## 15.7 – Arts and Culture

The integrated convention center expansion and stadium and related uses will be a significant civic development in the City visited and patronized by residents, visitors, tourists, and spectators. The development may provide opportunities for public art, sports history and memorabilia collection and/or sports museum and/or regional and local (college, high school and youth) sports museum.

### Goal – Arts and Culture

## BALLOT MEASURE (continued)

15.7.1-G-1. Encourage the incorporation of public art, sports history and memorabilia and/or museum and/or regional and local sports museum in the project.

### Policies – Arts and Culture

15.7.1-P-1. Allow a sports history and memorabilia and/or museum and/or regional and local sports museum as a permitted use in the project.

15.7.1-P-2. Incorporate public art at a location within the District integrated into the project's design.

## 15.8 – Health & Safety

### Geologic and Seismic Hazards

Various regulations enforced by the State of California and City of San Diego are intended to mitigate potential earthquake-related risks for new and existing development: Alquist-Priolo Zone Act, City of San Diego Fault and Liquefaction Zones, and Uniform Building Code. These regulations will be implemented in any development. Known faults and a high potential liquefaction zone have been identified on the western edge of the Convention Center Expansion and Stadium Mixed-Use District.

### Goal – Geologic and Seismic Hazards

15.8.1-G-1. Maintain a safe and livable environment by mitigating and avoiding risks posed by seismic conditions.

### Policy – Geologic and Seismic Hazards

15.8.1-P-1. Implement all applicable seismic-safety development requirements, including Alquist-Priolo Zone Act, City requirements for areas subject to potential liquefaction, and building codes.

### Noise

An integrated convention center expansion and stadium for professional football and other sports and entertainment, together with related uses have unique operating characteristics that warrant unique regulations relative to the generation of noise by permitted uses. The environmental design features in Appendix 15A to this Chapter 15 for the Convention Center Expansion and Stadium Mixed-Use District will include appropriate noise control features.

### Goal – Noise

15.8.2-G-1. Promote design and operational strategies that reduce continuous disruptive noise.

### Policies – Noise

15.8.2-P-1. Develop requirements for the Convention Center Expansion and Stadium Mixed-Use District that are intended to moderate noise while allowing all permitted uses.

15.8.2-P-2. Allow a wide range of uses permitted by right including, but not limited to conventions, exhibitions, trade shows, conferences, meetings, banquets, civic events, pageants, patriotic celebrations, public and private gatherings, sporting events, live entertainment, concerts, festivals, fairs, public markets, exhibitions, outdoor activities, fireworks and other special pyrotechnical effects, and eating and drinking establishments.

### Environmental Design Features

If an integrated convention center expansion and stadium is developed within the Convention Center Expansion and Stadium Mixed-Use District covered by this Chapter, the environmental design features in Appendix 15A shall be the only environmental design features or mitigation measures that apply.

## **Appendix 15A**

### **Environmental Design Features**

The following are environmental design features ("Environmental Features") required for the development, construction, operation, maintenance and/or management of the integrated convention-center expansion and stadium and related uses ("Project") within the Convention Center Expansion and Stadium Mixed-Use

District. During the course of implementation of the Project, the developer or operator may request modifications to the Environmental Features and the City Manager or his/her designee may administratively

### BALLOT MEASURE (continued)

approve such modifications if the City Manager or his/her designee determines that such modifications provide a similar level of protection from or reduction of the related environmental issues.

ENVIRONMENTAL DESIGN FEATURES	IMPLEMENTATION TIME FRAME
<b>AIR QUALITY (AQ)</b>	
<p><b>AQ.1:</b> Prepare and implement a Construction Management Plan which includes but is not limited to the following, as appropriate:</p> <ol style="list-style-type: none"> <li>1. Exposed soil areas shall be watered twice per day. On windy days or when fugitive dust can be observed leaving the development site, additional applications of water shall be applied as necessary to prevent visible dust plumes from leaving the development site. When wind velocities are forecast to exceed 25 miles per hour, all ground disturbing activities shall be halted until winds are forecast to abate below this threshold.</li> <li>2. Dust suppression techniques shall be implemented including, but not limited to, the following:               <ol style="list-style-type: none"> <li>a. Portions of the construction site to remain inactive longer than a period of three months shall be stabilized to minimize dust generation.</li> <li>b. On-site access points shall be paved as soon as feasible or watered periodically or otherwise stabilized.</li> <li>c. Material transported off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust.</li> <li>d. The area disturbed by clearing, grading, earthmoving, or excavation operations shall be minimized at all times.</li> </ol> </li> <li>3. Vehicles on the construction site shall travel at speeds less than 15 miles per hour.</li> <li>4. Material stockpiles subject to wind erosion during construction activities, which will not be utilized within three days, shall be covered with plastic, an alternative cover deemed equivalent to plastic, or sprayed with a nontoxic chemical stabilizer.</li> <li>5. Where vehicles leave the construction site and enter adjacent public streets, the streets shall be swept daily or washed down at the end of the work day to remove soil tracked onto the paved surface. Any visible track-out extending for more than fifty (50) feet from the access point shall be swept or washed within thirty (30) minutes of deposition.</li> <li>6. All diesel-powered vehicles and equipment shall be properly operated and maintained.</li> <li>7. All diesel-powered vehicles and gasoline-powered equipment shall be turned off when not in use for more than five minutes, as required by state law.</li> <li>8. The construction contractor shall utilize electric or natural gas-powered equipment in lieu of gasoline or diesel-powered engines, where feasible.</li> </ol>	<p>Prior to demolition or grading Permit</p>

**BALLOT MEASURE (continued)**

<b>ENVIRONMENTAL DESIGN FEATURES</b>	<b>IMPLEMENTATION TIME FRAME</b>
<p>9. <u>As much as possible, the construction contractor shall time the construction activities so as not to interfere with peak hour traffic. In order to minimize obstruction of through traffic lanes adjacent to the property, a flag-person shall be retained to maintain safety adjacent to existing roadways, if necessary.</u></p>	
<p>10. <u>The construction contractor shall support and encourage ridesharing and transit incentives for the construction crew.</u></p>	
<p>11. <u>Low volatile organic compounds (VOC) coatings shall be used as required by applicable San Diego Air Pollution Control District (SDAPCD) rules. Spray equipment with high transfer efficiency, such as the high volume low pressure (HPLV) spray method, or manual coatings application such as paint brush, hand roller, trowel, spatula, dauber, rag, or sponge, shall be used to reduce VOC emissions, where feasible.</u></p>	
<p>12. <u>If construction equipment powered by alternative fuel sources (e.g. LPG/CNG) is available at comparable cost, the developer shall specify that such equipment be used during all construction activities on the development site.</u></p>	
<p>13. <u>The developer shall require the use of particulate filters on diesel construction equipment if use of such filters is demonstrated to be cost competitive for use on this development.</u></p>	
<p>14. <u>During demolition activities, safety measures as required by City/County/State laws for removal of toxic or hazardous materials shall be utilized.</u></p>	
<p>15. <u>Rubble piles shall be maintained in a damp state or otherwise stabilized to minimize dust generation.</u></p>	
<p>16. <u>During finish work, low-VOC paints and efficient transfer systems shall be utilized, to the extent possible.</u></p>	
<p>17. <u>If alternative-fueled and/or particulate filter-equipped construction equipment is not feasible, construction equipment shall use the newest, least-polluting equipment, whenever possible.</u></p>	
<p>18. <u>Contractor contact information and responsibilities.</u></p>	
<p>19. <u>Construction hours.</u></p>	
<p>20. <u>Material storage and construction trailer locations.</u></p>	
<p>21. <u>Haul routes.</u></p>	
<p>22. <u>Construction parking plan.</u></p>	
<p>23. <u>Construction Traffic Management Plan (e.g., flag persons, signs, etc. as needed).</u></p>	
<p><b>AQ.2:</b> <u>The integrated convention center expansion and stadium shall be designed to be able to achieve the criteria for Leadership in Energy and Environmental Design (LEED) certification as determined by a LEED accredited professional.</u></p>	<p>Prior to issuance of building permit</p>
<p><b>AQ.3:</b> <u>Prepare and implement a Transportation Management Plan which includes but is not limited to the following, as appropriate:</u></p>	<p>Ongoing during operation</p>

**BALLOT MEASURE (continued)**

<b>ENVIRONMENTAL DESIGN FEATURES</b>	<b>IMPLEMENTATION TIME FRAME</b>
<p>1. Provide incentives for vanpools and electric vehicles during events at the convention center expansion and stadium such as through parking rates;</p> <p>2. Provide incentives to encourage transit use by service employees, such as discounted transit passes;</p> <p>3. Use electric maintenance carts for operations at the convention center expansion and stadium where feasible;</p> <p>4. Establish incentives for parking at outlying areas and using mass transit to access the convention center expansion and stadium such as through parking rates; and</p> <p>5. Encourage use of for-fee bus and trolley service from outlying areas to the convention center expansion and stadium.</p>	
<p><b>AQ.4:</b> Appoint a construction relations officer to act as a community liaison concerning on-site construction activities. A contact phone number for the construction relations officer shall be posted at the property.</p>	<p>Prior to demolition, grading or building permit</p>
<p><b>AQ.5:</b> Project construction deliveries shall be scheduled, where feasible, during off-peak traffic periods to encourage the reduction of trips during the most congested periods.</p>	<p>Ongoing during construction</p>
<p><b>CULTURAL RESOURCES (CR)</b></p>	
<p><b>CR.1:</b> If the potential exists for direct and/or indirect alterations to retained or relocated designated historical resources, the following measures shall be implemented. The Applicant shall have a historic preservation consultant meeting the Secretary of Interior's Professional Qualifications Standards prepare and monitor the implementation of a Treatment Plan in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and the associated applicable Secretary of the Interior's Guidelines. The Treatment Plan shall be shown as notes on all applicable construction documents (i.e. for construction in which the potential exists for direct and/or indirect alterations to retained or relocated designated historical resources on the property).</p>	<p>Prior to grading or building permit</p>

**BALLOT MEASURE (continued)**

<b>ENVIRONMENTAL DESIGN FEATURES</b>	<b>IMPLEMENTATION TIME FRAME</b>
<p><b>CR. 2:</b> A qualified archaeologist shall monitor all excavation and grading activities during initial site excavation and grading for project development. If archaeological resources are encountered during the initial ground disturbance, the archaeological monitor shall halt grading in the immediate vicinity where such resources are encountered and shall initiate an archaeological testing program. Archaeological resources found during grading shall be preserved in place to the extent feasible. If preservation in place is not feasible, a data recovery testing program shall be prepared by the archaeologist. The testing program shall include the recordation of artifacts, controlled removal of materials, and curation of a representative sample of recovered resources within a qualified curation facility. A testing report shall be deposited with the California Historical Resources Regional Information Center.</p>	<p>Ongoing during construction</p>
<p><b>CR. 3:</b> The developer shall retain a qualified paleontologist or paleontological monitor to monitor (i) at all times during the original cutting of previously undisturbed sediments within the San Diego Formation to inspect the excavation and spoils for the presence of fossil remains and (ii) at least half-time during the original cutting of previously undisturbed sediments in the Bay Point Formation except if a representative initial sample of the site reveals no significant fossil remains to the satisfaction of the paleontological monitor, then such monitoring may be terminated. When fossils are discovered, the paleontologist or paleontological monitor shall recover them. The paleontologist or paleontological monitor shall be allowed to temporarily direct, divert or halt excavation work to allow recovery of fossil remains in a timely manner. Fossil remains collected during the monitoring and salvage portion of the mitigation program shall be cleaned, sorted and catalogued and then with the owner's permission, deposited in a scientific institution with paleontological collections. A final summary report shall be prepared outlining the methods followed and summarizing the results of the recovery program. This report shall also include a list of the kinds of fossils recovered, and a summary of the stratigraphic context of all collecting localities. This report shall be submitted to the San Diego Natural History Museum and any scientific institution that received salvaged fossils from the activity.</p>	<p>Ongoing during construction</p>
<p><b>GEOLOGY/SOILS (GEO)</b></p>	

**BALLOT MEASURE (continued)**

<b>ENVIRONMENTAL DESIGN FEATURES</b>	<b>IMPLEMENTATION TIME FRAME</b>
<p><b>GEO.1:</b> Prepare site-specific engineering geology and geotechnical reports in accordance with the San Diego Building Code to the satisfaction of the Development Services Department and comply with the site-specific recommendations set forth therein. The geology and geotechnical reports shall include site-specific studies and analysis for potential geologic and/or geotechnical hazards at the property. Geotechnical reports shall address the design of foundations, walls below grade, retaining walls, shoring, subgrade preparation for floor slab support, piling, earthwork methodologies, and dewatering, where applicable. Geology and geotechnical reports may be prepared separately or together and signed and stamped by a Professional Geologist or Professional Engineer licensed in the State of California.</p>	<p>Prior to grading or building permit</p>
<p><b>GEO.2:</b> Where applicable, demonstrate that liquefaction either poses a sufficiently low hazard to satisfy the defined acceptable risk criteria, in accordance with applicable requirements, or implement suitable measures to effectively reduce the hazard to acceptable levels in accordance with applicable building requirements. The analysis of liquefaction risk shall be signed and stamped by a Professional Geologist or Professional Engineer licensed in the State of California and shall be submitted to the satisfaction of the Development Services Department.</p>	<p>Prior to grading or building permit</p>
<p><b>GEO.3:</b> Structures shall be designed to withstand hydrostatic pressures consistent with applicable building regulations.</p>	<p>Prior to construction</p>
<p><b>HAZARDOUS MATERIALS (HAZ)</b></p>	
<p><b>HAZ.1:</b> Any soil, groundwater and/or subsurface structures contaminated with hazardous substances encountered on-site during construction shall be managed in accordance with applicable laws. Such management may include without limitation:                      removal and proper disposal and/or treatment of any contaminated material encountered on-site as necessary to comply with applicable law;                      design and construction of improvements on-site in a manner protective of occupants from contamination to the extent required by applicable law;                      obtain and comply with any applicable permits or approvals required under applicable laws for the management of hazardous materials encountered during construction on-site; and                      to the extent that underground storage tanks are encountered during construction, any required closure permits for hazardous materials storage structures shall be filed and any required remediation of soil and/or groundwater shall be conducted in compliance with applicable laws.</p>	<p>Prior to and/or during construction</p>

**BALLOT MEASURE (continued)**

<b>ENVIRONMENTAL DESIGN FEATURES</b>	<b>IMPLEMENTATION TIME FRAME</b>
<b>HAZ.2:</b> Asbestos surveys of buildings to be demolished and, if necessary, abatement, shall be undertaken in compliance with applicable laws prior to building demolition.	Prior to demolition
<b>HAZ.3:</b> Lead based paint surveys of buildings to be demolished and, if necessary, abatement, shall be undertaken in compliance with applicable laws prior to building demolition.	Prior to demolition
<b>HAZ.4:</b> Hazardous materials, if any, associated with Project construction shall be located and stored in compliance with applicable federal, state and local requirements. Response procedures for spills and leaks of hazardous materials, if any, shall be established in compliance with applicable federal, state and local requirements.	Ongoing during construction
<b>HAZ.5:</b> Hazardous materials, if any, associated with maintenance of the Project and uses shall be located and stored in compliance with applicable federal, state and local laws. Response procedures for spills and leaks of hazardous substances, if any, shall be established in compliance with applicable federal, state and local laws.	Ongoing during operation
<b>HYDROLOGY/WATER QUALITY (HYD/WQ)</b>	
<b>HYD/WQ.1:</b> Comply with applicable statewide General Permit for Discharges of Storm Water Associated with Construction Activities, if applicable for construction activities on the property. If applicable, a Notice of Intent to Comply shall be filed with the State Water Resources Control Board.	Prior to issuance of building permit
<b>HYD/WQ.2:</b> Comply with applicable National Pollutant Discharge Elimination System permit requirements for municipal storm water and urban runoff discharges to the extent applicable.	Ongoing during operation
<b>LIGHT AND GLARE (LG)</b>	
<b>LG.1:</b> Project construction lighting shall be shielded and/or aimed to direct the light source on to the property to the extent feasible. However, construction lighting shall not be so limited as to compromise the safety of construction workers.	Ongoing during construction
<b>LG.2:</b> Luminaires used in field lighting towers shall contain glare control optics and accessories such as arc tube shields and visors to minimize the impact to the surrounding areas in close proximity to stadium.	Prior to building permit
<b>LG.3:</b> All building-mounted lighting (non-signage) shall direct the light to the intended object and shall not introduce additional light directly toward neighboring properties outside of the property.	Prior to certificate of occupancy
<b>LG.4:</b> Open-sided parking structures shall use cut-off luminaires or shall provide shields on the perimeter so that light from within the structure does not result in substantial levels of light spill on to off-site residences.	Prior to certificate of occupancy



**BALLOT MEASURE (continued)**

<b>ENVIRONMENTAL DESIGN FEATURES</b>	<b>IMPLEMENTATION TIME FRAME</b>
<u>LG. 5: Surface parking lot lighting shall use full cut-off type fixtures to reduce intrusive light spill onto adjacent off-site residences.</u>	Prior to building permit
<u>LG. 6: All exterior internally illuminated signage that is located immediately adjacent to off-site residences shall be shut-off within 30 minutes after conclusion of an event at the convention center expansion or stadium or 10:00 pm, whichever is later.</u>	Ongoing during operation
<u>LG. 7: Stadium and signage lighting shall be designed and oriented in such a manner as to reduce intrusive light spill on to adjacent off-site residences.</u>	Prior to building permit
<u>LG. 8: Lighting for any roof-top parking levels should either be wall-mounted or on poles. Light poles should not exceed a maximum height of fifteen feet, should be located at least twenty feet from any property line, and should be designed to limit the visibility of the light source from any property line. Lighting levels should comply with the requirements of the Illuminating Engineers Society's Manual, as amended.</u>	Prior to building permit
<b>NOISE (N)</b>	
<p><u>N. 1: Prepare and implement a Construction Management Plan as set forth in AQ.1. The Construction Management Plan shall include construction noise management measures to reduce construction noise at off-site noise sensitive locations to the extent feasible. The Construction Management Plan shall provide that project construction and demolition activities shall be limited to between 7:00 am to 8:00 pm Monday through Saturday and 7:00 am to 6:00 pm Sundays and holidays except that the following construction activities may occur between 8:00 pm and 7:00 am Monday through Saturday and 6:00 pm and 8:00 am Sundays: construction activities which cannot be interrupted (e.g., continuous concrete pours); construction activities conducted within a structure located more than 400 feet from an off-site noise sensitive location; construction activities that must occur during such hours due to restrictions imposed by a public agency; and emergency repairs, such as repairs to damage to utility infrastructure.</u></p> <p><u>At a minimum, the construction noise management plan shall include the following requirements:</u></p> <ul style="list-style-type: none"> <li>• <u>Noise-generating equipment operated at the property shall be equipped with noise control devices to the extent reasonably available (i.e., mufflers, intake silencers, lagging, and/or engine enclosures). All equipment shall be properly maintained to assure that no additional noise, due to worn or improperly maintained parts, would be generated.</u></li> <li>• <u>Pile drivers used within 1,500 feet of off-site sensitive uses such as residences and schools shall be equipped with noise control measures to reduce sound energy emissions associated with pile driving (e.g., use of noise attenuation shields or shrouds). Holes for piles will be pre-drilled to the extent feasible.</u></li> </ul>	Prior to grading or building permit

**BALLOT MEASURE (continued)**

ENVIRONMENTAL DESIGN FEATURES	IMPLEMENTATION TIME FRAME
<ul style="list-style-type: none"> <li>• <u>Temporary sound barriers shall be used and relocated, as needed, for grading and foundation work whenever construction activities occur within 150 feet of off-site residences, to block line-of-site between the construction equipment and the residences.</u></li> <li>• <u>Loading areas shall be located away from off-site residences.</u></li> <li>• <u>Haul routes shall avoid noise-sensitive land uses to the extent feasible.</u></li> <li>• <u>Staging areas and construction material storage areas shall be located away from off-site residences.</u></li> <li>• <u>A construction relations officer shall be designated to serve as a liaison with off-site residents, and a contact telephone number shall be provided to residents.</u></li> </ul>	
<p><u>N.2: The amplified sound system for concert events and other non-athletic events (including sound systems brought into the convention center expansion and stadium for specific events) shall be designed so that sound levels do not exceed 105 dBA, as measured at 100 feet from the edge of the stage.</u></p>	Ongoing during operation
<p><u>N.3: The convention center expansion and stadium sound system, including the public address system, shall be designed, installed, and operated to reduce sound spillage to adjacent off-site sensitive uses such as residences and schools.</u></p>	Ongoing during operation
<p><u>N.4: Fireworks displays at stadium events shall be limited to the following:</u></p> <ul style="list-style-type: none"> <li>• <u>Other than as set forth below, no more than three 30-minute and ten 10-minute pyrotechnic fireworks display shall occur during a single football season.</u></li> <li>• <u>Additional pyrotechnic fireworks displays of no more than 10-minute duration may occur on Season Opening Game, Season Closing Game, Memorial Day, Independence Day, Labor Day, New Year's Eve, a winter holiday show, Playoff Games, Super Bowl Games; and</u></li> <li>• <u>Theatrical fireworks displays of no more than 30 seconds duration will be allowed following home-team scoring events at each game.</u></li> </ul>	Ongoing during operation
<p><b>PUBLIC SERVICES (PB)</b></p>	
<p><u>PB.1: During Project construction, implement security measures at construction sites that are accessible to the general public. Security measures could include, but are not limited to, fencing, security lighting, and providing security personnel to patrol construction sites.</u></p>	Ongoing during construction
<p><u>PB.2: A waste management plan shall be implemented to reduce waste diverted to local landfills. Components of the plan may include without limitation:</u></p> <ul style="list-style-type: none"> <li>• <u>types of materials expected to enter the waste stream.</u></li> </ul>	Prior to certificate of occupancy

**BALLOT MEASURE (continued)**

<b>ENVIRONMENTAL DESIGN FEATURES</b>	<b>IMPLEMENTATION TIME FRAME</b>
<ul style="list-style-type: none"> <li>• <u>source reduction techniques to be used;</u></li> <li>• <u>recycling and/or composting programs;</u></li> <li>• <u>and buy recycled programs.</u></li> </ul>	
<p><b>PB.3:</b> <u>Clearly marked, durable, source sorted recycling bins shall be conveniently located within the property unless the property is under contract with a vendor to sort waste.</u></p>	<p><u>Ongoing during operation</u></p>
<p><b>PB.4:</b> <u>As part of the convention center expansion and stadium operations, the operator shall develop in consultation with the police department and fire department, and update as necessary, and implement a safety and operations plan that manages compliance with site security rules including noise management measures, alcoholic beverage sale conditions and communications systems and access for emergency response. The plan shall include provisions to ensure compliance with State requirements related to the sale of alcoholic beverages.</u></p>	<p><u>Ongoing during operation</u></p>
<p><b>PB.5:</b> <u>The operator shall pay the police and/or fire department the actual cost to staff additional personnel and equipment required by the operator.</u></p>	<p><u>Per event during operation</u></p>
<p align="center"><b>TRANSPORTATION, CIRCULATION, ACCESS AND PARKING (T)</b></p>	
<p><b>T.1:</b> <u>An Event Transportation Management Plan (ETMP) shall be developed and implemented in coordination with affected government agencies. The ETMP may include, without limitation, the following:</u></p> <ul style="list-style-type: none"> <li>• <u>Event traffic control</u></li> <li>• <u>Parking management</u></li> <li>• <u>Police control/traffic enforcement prior to and after major events</u></li> <li>• <u>Incident management plans and procedures</u></li> <li>• <u>Pedestrian and bicycle management</u></li> <li>• <u>Transit management</u></li> </ul> <p><u>Public information program.</u></p>	<p><u>Prior to certificate of occupancy</u></p>
<p><b>T.2:</b> <u>Prepare and implement a Construction Traffic Management Plan as set forth in AQ.1 above. The Construction Traffic Management Plan shall include provisions for temporary traffic controls, such as flag persons, as needed, during construction to maintain traffic flows.</u></p>	<p><u>Prior to grading or building permit</u></p>
<p><b>T.3:</b> <u>Prepare and implement a Transportation Management Plan as set forth in AQ.2 above.</u></p>	<p><u>Ongoing during operation</u></p>

**BALLOT MEASURE (continued)**

ENVIRONMENTAL DESIGN FEATURES	IMPLEMENTATION TIME FRAME
<p><u>T.4: Prepare and implement a Parking Management Plan which may include provisions to protect parking in the Gaslamp District, East Village and regulatory parking obligations of the Convention Center and restrict event parking in surrounding neighborhoods, which may include providing signage indicating "no event parking", limited parking duration during events, security guards, and/or a parking fee structure to discourage long-term event parking.</u></p>	<p>Prior to certificate of occupancy</p>
<p><u>T.5: Provide adequate sidewalk widths in all pedestrian corridors to the extent feasible public health, safety or building code requirements do not conflict with the improvement.</u></p>	<p>Prior to certificate of occupancy</p>

**Section 5. Amendments to San Diego Municipal Code.**

The voters hereby amend the City of San Diego Municipal Code as follows (new language to be inserted into the San Diego Municipal Code is shown as underlined text and language to be deleted is shown in ~~struckthrough text~~; language shown in regular type reflects the existing San Diego Municipal Code text and is provided for informational/reference purposes).

San Diego Municipal Code Chapter 3, Chapter 5, Chapter 6, Chapter 15, and the Official Zoning Map of the City of San Diego, are hereby amended as follows:

A. The real property bounded by the centerlines of the public right-of-ways of K Street on the north, 16<sup>th</sup> Street on the east, Imperial Avenue on the south, and 12<sup>th</sup> Avenue on the west, as shown on **Exhibit B** to this Initiative, is rezoned as follows: 1) the eastern portions are rezoned from CCPD-BP to CCPCP- BP/CCESPD-MU; and 2) the western portions are rezoned from CCPD-MC to CCPD-MC/CCESPD-MU, as the zones are described and defined by the Land Development Code and this Initiative. This action amends the Official Zoning Map of the City of San Diego.

B. Chapter 15 of the San Diego Municipal Code, part of the San Diego Land Development Code, is hereby amended to add Article 21 to read as follows:

**Article 21: The Convention Center Expansion and Stadium Planned District**

**Division 1: General Rules**

**§1521.0101 Purpose and Applicability**

(a) Purpose

The purpose of the Convention Center Expansion and Stadium Planned District is to establish land use regulations and development criteria to permit as a development option the development of a new integrated Convention Center Expansion and Stadium and related uses within the amended Downtown Community Plan area. This Article is intended to establish regulations that will:

1. Result in a distinctive world-class integrated Convention Center Expansion and Stadium.
2. Allow a diverse range of permitted uses to facilitate the area's further transformation into a regional convention center expansion, tourism, and sports and entertainment district patronized by local residents as well as visitors.
3. Establish standards that allow for a unique, unified site for development of an integrated Convention Center Expansion and Stadium, together with related uses.

**BALLOT MEASURE (continued)**

4. Provide for advisory design review for an integrated *Convention Center Expansion and Stadium*, together with related uses.
5. Provide economic *development* opportunities associated with development of an integrated *Convention Center Expansion and Stadium*, together with related uses.

**FIGURE A**

**CONVENTION CENTER EXPANSION AND STADIUM PLANNED DISTRICT**



**(b) Boundaries and Applicability**

- (1) The *Convention Center Expansion and Stadium Planned District* is within the boundaries of the amended Downtown Community Plan, specifically those properties bounded by K Street on the north, 16<sup>th</sup> Street on the east, Imperial Avenue on the south, and 12<sup>th</sup> Avenue on the west as shown in Figure A.
- (2) This Article shall be applicable if an integrated *Convention Center Expansion and Stadium* is to be developed within the boundaries described above and such *Convention Center Expansion and Stadium development* shall solely be regulated by this Article.
- (3) If an integrated *Convention Center Expansion and Stadium* is not to be developed within the boundaries of the *Convention Center Expansion and Stadium Planned District* this Article shall have no force and effect.

**§1521.0102 Applicable Regulations**

- (a) Notwithstanding any provision of the San Diego Municipal Code or any other law of the City to the contrary, including but not limited to, Chapter 15, Article 1, Division 1, the only applicable Land

## BALLOT MEASURE (continued)

Development Code regulations in the *Convention Center Expansion and Stadium Planned District* shall be those included in this Article 21. The *Convention Center Expansion and Stadium Planned District* regulations shall supersede any regulations in the Land Development Code that are inconsistent with the regulations in this Article.

(b) The applicable regulations of the Land Development Code regarding Grading Regulations (Chapter 14, Article 2; Division 1), Drainage Regulations (Chapter 14, Article 2, Division 2), Subdivision Regulations (Chapter 14, Article 4), Building Regulations (Chapter 14, Article 5), Electrical Regulations (Chapter 14, Article 6), Plumbing Regulations (Chapter 14, Article 7), and Mechanical Regulations (Chapter 14, Article 8) shall apply. Where there is a conflict between the Land Development Code and this Article, this Article shall apply.

### **§1521.0103 Definitions**

The following definitions and those definitions related to *signs* in Section 1521.0403(e) apply to this Article. Each word or phrase that is defined in this Article appears in the text of this Article in italicized letters.

*Accessory structure* means a *structure* attached to or detached from a *primary structure* located on the same *premises* that is customarily incidental and subordinate to the *primary structure* or use. The term *accessory structure* includes accessory buildings.

*Accessory use* means a use of land or building, or portion thereof that is customarily incidental to, related to, and clearly subordinate to a *primary use* of the land or building located on the same *premises*.

*Active commercial uses* mean commercial uses that are accessible to the general public, that generate walk-in clientele, and that contribute to a high level of pedestrian activity.

*Active commercial uses* include retail shops, restaurants, bars, commercial recreation and entertainment, *personal and convenience services*, banks, travel agencies, airline ticket agencies, *child care facilities*, *cultural uses*, theaters and the performing arts, libraries, museums, and galleries.

*Applicant* means the developer of the *Convention Center Expansion and Stadium* who has filed an application for a permit, map, or other matter.

*Blank wall* means any *street wall* area that is not transparent, including solid doors and mechanical area wall(s).

*Bona-fide eating establishment* means a place that is primarily used for serving individually prepared meals to guests for compensation. A *bona-fide eating establishment* contains suitable *kitchen* facilities within the establishment and adequate seating for patrons.

*Building materials* mean all materials visible from the exterior of a *development*, including materials used for walls, roofs, *structures*, windows, doors, and architectural or decorative features applied to the facade.

*Child care facility* means a facility that provides nonmedical care for children less than 18 years of age, on less than a 24-hour basis including small family day care homes, large family day care homes, and child care centers.

*Civic San Diego* means the non-profit public corporation, of which the City of San Diego is the sole member, or a successor organization, if any.

*Clearing* means the cutting and removal of existing vegetation from a site without disturbance to the soil or surface or destruction of the root system.

*Convention Center Expansion* means a convention center exhibition facility containing approximately three hundred eighty-five thousand (385,000) square feet in net floor area of exhibition halls, ballrooms, and meeting rooms, into which a *Stadium* shall be integrated, which convention center facility may also include offices, restaurants, cafes, *kitchen* facilities, storage

## BALLOT MEASURE (continued)

areas, parking, and other ancillary gross floor area, customarily part of a convention center facility.

Convention Center Expansion and Stadium Development Permit means the permit(s) which are required pursuant to this Article.

Convention Center Expansion and Stadium Planned District means the Planned District governed by this Article.

Cultural institution or cultural use means a non-profit institution recognized as a 501(c), displaying or preserving objects of interest in the arts or sciences. Cultural uses include libraries, museums, non-profit art galleries, and interpretive centers.

Design review means ministerial advisory design review of the proposed Convention Center Expansion and Stadium within the Planned District governed by this Article.

Development means the act, process, or result of dividing a parcel of land into two or more parcels; of erecting, placing, constructing, reconstructing, converting, establishing, altering, maintaining, relocating, demolishing, using, or enlarging any building, structure, improvement, lot, or premises; of clearing, grubbing, excavating, embanking, filling, managing brush, or agricultural clearing on public or private property including the construction of slopes and facilities incidental to such work; or of disturbing any existing vegetation.

Eating and drinking establishments means businesses serving prepared food or beverages for consumption on or off the premises.

Encroachment means an intrusion of development into the public right-of-way or into required yards.

Fence means a vertical barrier or enclosure constructed of any material that supports no load other than its own weight.

Floor means a horizontal, continuous, supporting, or nonsupporting surface of a structure.

Floor Area Ratio (FAR) means the ratio of total enclosed building gross floor area to the area of the premises. The FAR is an indication of the intensity of development. FAR shall not include the gross floor area of the Stadium and its accessory uses and other gross floor areas excluded by this Article.

Food sales means the retail sales of prepared food or food for home preparation including bakeries, candy stores, ice cream stores, delicatessens, grocery stores and supermarkets.

Grade means the elevation of the surface of the ground.

Grading means any earthwork that involves grubbing, excavating, embanking, or filling.

Gross floor area means the area included within the surrounding exterior walls of a building or portion thereof, exclusive of certain elements and features as set forth in Section 1521.0104. Gross floor area does not include areas below grade which are considered basements under the California Building Code.

Grubbing means the removal or destruction of vegetation by disturbance to the root system or soil surface by mechanical, chemical, or other means.

Kitchen means an area used or designed to be used for the preparation of food which includes facilities to aid in the preparation of food such as a sink, a refrigerator and stove, a range top or oven.

Live entertainment means live performances by musicians, singers, dancers, disc jockeys, or similar entertainers, and may include dancing by customers of an establishment.

Lot means a parcel, tract, or area of land established by plat, subdivision, or other legal means to be owned, used, or developed.

Mixed-use development means development that includes two or more land uses.

## BALLOT MEASURE (continued)

Mobile food trucks are motorized vehicles that function as transportable retail food and beverage facilities. Mobile food trucks do not include pushcarts.

Outdoor activities are temporary uses that include tailgating, farmer's markets and other markets, arts and cultural events, social or community events.

Pedestrian entrance means a functional entrance or door that is accessible to the general public from an enclosed occupied space. This does not include entrances to mechanical equipment or storage areas, emergency exits, or decorative nonfunctional doors and entrances.

Penthouse means a structure for enclosing mechanical equipment or stairs that is located on the roof of a multi-story building and set back from the vertical projections of the exterior building walls.

Personal and convenience services include services of a frequently recurring nature such as barber and beauty shops, drug stores, dry cleaning, self-service laundries, shoe repair and tailors.

Premises means the area of land within the Convention Center Expansion and Stadium Planned District.

Previously conforming means the circumstance where a use or structure complied with all applicable state and local laws when it was first built or came into existence, but because of a subsequent change in zone or development regulations, is not in conformance with the current zone or all development regulations applicable to that zone.

Primary use means the allowed use on the premises that occupies a majority of the area of the premises.

Process One means an administrative process that allows the City Manager or his/her designee to approve or deny a permit based upon ministerial criteria outlined in this Article.

Property line means a line that defines the boundaries of a lot or the premises for purposes of applying development regulations.

Public right-of-way means a public easement for streets, alleys, or other uses.

Public safety facility means a facility operated by the City of San Diego or its agent that is utilized for public safety and emergency services, including police and fire protection.

Pushcart means moveable, wheeled, non-motorized vehicles used by vendors for the sale of food or beverage products or other retail items.

Roof deck means an enclosed or partially enclosed area, with or without an overhead structure, cover, or roof, that is located on a flat or relatively flat roof of a building. Any walled area erected exclusively to screen mechanical equipment is not a roof deck.

Screen, screened or screening means partial or full enclosure of a space or area by solid materials or landscaping that are compatible with the materials and architectural design of the development in order to block views of the area from nearby development or public rights-of-way.

Setback means a required distance inward from and perpendicular to a property line at or behind which all structures must be located unless otherwise specified.

Shared parking means the sharing of an off-street parking facility or facilities by two or more uses.

Stadium means a first class professional football stadium with a permanent seating capacity of up to approximately sixty-five thousand (65,000) seats, including club seats, loge seats, suite seating and other premium seats, with an expansion seating capacity of up to approximately seventy-five thousand (75,000) seats, including club seats, loge seats, suite seating and other premium seats, for larger events, including Super Bowls, and other ancillary uses, including without limitation, concession areas, restaurants, bars, clubs, retail stores, kiosks, media



## BALLOT MEASURE (continued)

facilities, athletic training and medical facilities, locker rooms, offices, meeting rooms, banquet facilities, ticketing facilities, on-site and off-site signage, scoreboards, and other ancillary facilities customarily part of a stadium of a quality necessary to host professional football, professional soccer, collegiate, and civic events, and conventions, exhibitions and concerts.

Story means the area between grade and finished floor, the area between finish-floor elevations or the area between the finish-floor elevation and the roof elevation.

Street means that portion of the public right-of-way that is dedicated or condemned for use as a public road and includes highways, boulevards, avenues, places, drives, courts, lanes, or other thoroughfares dedicated to public travel, but does not include alleys.

Street frontage means the length of the property line along the street it borders.

Street wall means the building façade along a property line adjacent to any public street. The street wall may include arcades, colonnades, recessed entrances, or urban open space.

Structure means an edifice or building of any kind or any construction built up or composed of parts joined together in some definite manner including a wall, fence, pier, post, sign, or shelter.

Structured parking means all parking facilities that serve a primary use or that are open to the general public.

Urban open space means any usable space accessible to the general public which is 1,000 square feet or greater in size and includes plazas or parks.

### §1521.0104 Rules of Calculation and Measurement

Gross floor area shall not include the following:

- (a) Stadium and its accessory uses, including without limitation concourse and concession areas, locker rooms, training areas, meeting rooms, office, storage areas, and mechanical rooms, shall not count as gross floor area.
- (b) Designated historic resources shall not count as gross floor area if the designated historic resource is rehabilitated or relocated and incorporated into the development.
- (c) Mechanical penthouses shall not count as gross floor area when architecturally integrated into the overall building design.
- (d) Phantom floors shall not count as gross floor area.
- (e) Roof decks shall not count as gross floor area unless three (3) or more of the perimeter walls enclosing the area exceed 6 feet in height for non-transparent materials or 12 feet in height for transparent materials.
- (f) Public safety facilities shall not count as gross floor area.
- (g) Above-grade and below-grade parking and loading areas shall not count as gross floor area.
- (h) Urban open space, atria and multi-level interior-enclosed space shall not count as gross floor area.

### Article 21: The Convention Center Expansion and Stadium Planned District Division

#### Division 2: Permits and Procedures

### §1521.0201 Administrative Regulations

#### (a) Administration

- (1) If an integrated Convention Center Expansion and Stadium is to be developed within the Convention Center Expansion and Stadium Planned District, the City shall administer this Article to ensure compliance with the provisions of this Article.

## BALLOT MEASURE (continued)

- (2) If an integrated Convention Center Expansion and Stadium is not to be developed within the boundaries of the *Convention Center Expansion and Stadium Planned District* this Article shall have no force and effect.

### (b) Activities Regulated

- (1) No *Convention Center Expansion and Stadium* building, structure or improvement or portion thereof shall be erected, constructed, converted, demolished or established unless it complies with the requirements of this Article.
- (2) The City Manager or his/her designee shall not issue any permit for such activities in any portion of the *Convention Center Expansion and Stadium Planned District* until the City Manager or his/her designee has issued a *Convention Center Expansion and Stadium Development Permit* signifying compliance with the provisions of this Article.

## **§1521.0202 Convention Center Expansion and Stadium Development Permit Process**

### (a) Permit Required

- (1) A *Convention Center Expansion and Stadium Development Permit* shall be required for a *Convention Center Expansion and Stadium* prior to issuance of any City construction permits within the *Convention Center Expansion and Stadium Planned District*.
- (2) A permit is not required for modifications, repairs, or other alterations that do not require any permit issued by the City of San Diego or do not increase *gross floor area*.

### (b) Overview of Decision Process

An application for an integrated *Convention Center Expansion and Stadium* within the *Convention Center Expansion and Stadium Planned District* shall be decided in accordance with the process described below.

#### (1) Process One

An application for a *Convention Center Expansion and Stadium Development Permit* processed in accordance with *Process One* may be approved or denied by the City Manager or his/her designee based upon ministerial criteria outlined in this Article. A public hearing is not required.

### (c) Convention Center Expansion and Stadium Development Permit Process

#### (1) Collection of Fees or Deposits

- (A) The *applicant* shall pay all generally applicable standard City fees or deposits for a development permit.
- (B) If a deposit is required, and the deposit is *insufficient* to cover the actual cost to the City, the *applicant* shall submit an additional deposit, in an amount determined by the City Manager, to cover the City's actual costs. Actual City costs will be itemized in a statement to the *applicant*. Any portion of the deposit not required to cover the City's processing costs will be returned to the *applicant*.

#### (2) Review Procedures. A *Convention Center Expansion and Stadium Development Permit* shall be subject to the following rules:

##### (A) Administrative Review.

- (i) Within fifteen (15) calendar days of receipt of a *Convention Center Expansion and Stadium Development Permit* application, the City Manager or his/her designee (which for purposes of advisory *design review* may

## BALLOT MEASURE (continued)

include, without limitation, *Civic San Diego*) shall initiate an advisory *design review* of the application as set forth in Section 1521.0202(c)(2) (B) below. Advisory *design review* shall occur prior to conducting an administrative review of the *development* in accordance with *Process One*. The City Manager or his/her designee shall not issue the *Convention Center Expansion and Stadium Development Permit* until the *applicant* has completed the advisory *design review* for the basic concept/schematic phase.

(ii) The City Manager or his/her designee shall issue the decision on the *Convention Center*

*Expansion and Stadium Development Permit* within forty-five (45) calendar days of the completion of advisory *design review* for the design development phase and shall at the *applicant's* request issue the *Convention Center Expansion and Stadium Development Permit* in phases, including but not limited to, *clearing, grubbing, demolition, grading, excavation, foundation, subsurface structure, and superstructure*, following *design review* of the basic concept/schematic drawings.

(iii) The decision of the City Manager or his/her designee regarding the *Convention Center Expansion and Stadium Development Permit* is final.

(B) Advisory *design review*. Advisory *design review* of the *Convention Center Expansion and Stadium* shall be undertaken by the City Manager or his/her designee (which for purposes of advisory *design review* may include, without limitation, *Civic San Diego*). The advisory *design review* process shall consist of the submission of:

(i) Basic concept/schematic drawings.

(ii) Design development drawings.

The City Manager or his/her designee shall provide a detailed *design review* of each drawing submission in writing within thirty (30) calendar days following receipt of the submission as provided for herein. If the design of the *Convention Center Expansion and Stadium* materially changes following *design review* of the design development drawings, the *applicant* shall resubmit the applicable drawings for subsequent *design review*. The City Manager or his/her designee may issue the *Convention Center Expansion and Stadium Development Permit* in phases following the advisory *design review* of the basic concept/schematic drawings of the *Convention Center Expansion and Stadium*.

(C) Public Notice.

(i) Notice of advisory *design review* meetings shall be provided at least 10 days before the *design review* meeting as provided in (A) and (B) below.

(A) Written notice is mailed to (i) all addresses and owners of real property within three hundred (300) feet of the boundary of the District, (ii) any person who has submitted a written request for notification for the proposed *development* to the City, (iii) the officially recognized community planning group for the District, if any, and (iv) the San Diego County Regional Airport Authority.

(B) Placing a display advertisement of at least one-eighth page in a newspaper of general daily circulation within the City in addition to mailing the notices as set forth in (A) above.

(ii) Notice of *Convention Center Expansion and Stadium Development Permit*. The *applicant* requesting the *Convention Center Expansion and Stadium*

## BALLOT MEASURE (continued)

Development Permit shall post three public notices on the perimeter of the District at least 10 days before the City Manager or his/her designee issues a decision on a Convention Center Expansion and Stadium Development Permit in the Convention Center Expansion and Stadium Planned District.

### (3) Development Review Progression

The preparation, submittal, and review of the integrated Convention Center Expansion and Stadium proposal shall proceed as follows:

- (A) The Convention Center Expansion and Stadium may be reviewed in phases at the applicant's request. The criteria for submitting each stage of drawings and a description of the design review process are as follows:
- (B) The basic concept/schematic drawings shall illustrate the basic organization of the site. The City Manager or his/her designee (which for purposes of advisory design review may include, without limitation, Civic San Diego) shall advise on the basic concept/schematic drawings for two- and three-dimensional considerations such as the relationship of land use within the project, relationship of the project to proposed and existing land uses adjoining the site, siting considerations such as vehicular and pedestrian circulation, provision for urban open space, architectural composition, quality of proposed materials, and three-dimensional images of the project. The applicant shall provide a narrative explaining the design concept and shall submit the following items as part of the basic concept/schematic drawings, to the extent applicable for the development phase being submitted:
  - (i) Description of the development concept including the density, gross floor area devoted to specific land uses, number of floors, type of construction and FAR.
  - (ii) Site plan at a scale no smaller than one thirty-second inch equals one foot (1/32" = 1'). The site plan shall show the relationship of the proposed integrated Convention Center Expansion and Stadium and any related uses proposed at that time to nearby development within approximately three hundred (300) feet and shall also illustrate the dimensions of the site and the proposed integrated Convention Center Expansion and Stadium and any related uses.
  - (iii) Floor plans that illustrate subsurface and ground floor plans at a scale not smaller than one thirty-second inch equals one foot (1/32" = 1').
  - (iv) At least two (2) project sections at a scale not smaller than one thirty-second inch equals one foot (1/32" = 1').
  - (v) Exterior concept elevations of each street frontage.
  - (vi) One (1) exterior perspective drawn from a street level view.
  - (vii) Tabulation of the net and gross building area including FAR, building coverage, urban open space areas, and total area devoted to parking and number of spaces.
  - (viii) Preliminary identification of materials, finishes, colors and landscaping.
  - (ix) Preliminary off-site improvements, if any, landscape and grading plans that illustrate the design elements of on-site public spaces.
  - (x) Statement of conformity to this Article.

## BALLOT MEASURE (continued)

(xl) Massing model that illustrates the scale and architectural design concept of the project.

(C) Design development drawings should be a refinement of the basic concept/schematic drawings. Responses to advice provided during the advisory design review of the basic concept/schematic drawings shall also be provided. Drawings should include, to the extent applicable for the development phase being submitted, accurate site surveys, floor plans, elevations, sections, design details, and a palette of exterior colors and materials. Additional drawings, such as pedestrian and vehicular circulation, landscape plans, provision for servicing (i.e. loading areas), off-site improvement drawings, utility infrastructure, exterior architectural features, urban design features, or other project features, may also be provided to clarify the intent and extent of the project.

(d) Determination. A Convention Center Expansion and Stadium Development Permit shall be granted if the City Manager or his/her designee determines that the proposed integrated Convention Center Expansion and Stadium, as submitted or modified, is consistent with this Article.

(1) Permit Issuance. If the City Manager or his/her designee approves a Convention Center Expansion and Stadium Development Permit, in total or in phases, the development shall be referred to the Development Services Department for any other ministerial actions as necessary. Denial of a Convention Center Expansion and Stadium Development Permit requires the City Manager or his/her designee to issue a detailed written determination of non-conformance with the provisions of this Article specifying the specific provisions of this Article, which have not been satisfied.

(2) Permit Time Limits. A Convention Center Expansion and Stadium Development Permit is effective for three years from the date of approval, which shall automatically be tolled during the period of any legal challenges. If a building permit has not been obtained within the three years, the Convention Center Expansion and Stadium Development Permit shall be extended for an additional year upon the applicant demonstrating good faith efforts to obtain the building permit.

(e) Minor Modifications and Interpretations. Minor modifications from the requirements and development standards in this Article may be approved by the City Manager or his/her designee pursuant to Process One. A minor modification may include, but is not limited to, a variation not to exceed five percent (5%) of a maximum height of a building or structure or a sign or to the locations of signs. Advisory design review is not required. Whenever any ambiguity or uncertainty exists related to the uses permitted in the Convention Center Expansion and Stadium Planned District or the application of this Article so that it is difficult to determine the precise application of the provisions of the Article, the City Manager or his/her designee shall, upon application by the applicant, issue written interpretations of the requirements of this Article consistent with the purpose and intent of this Article. A minor modification or interpretation pursuant to this provision shall not be deemed to be an amendment to this Article. The decision of the City Manager or his/her designee shall be final.

### Article 21: The Convention Center Expansion and Stadium Planned District

#### Division 3: Zoning

##### §1521.0301 Land Use District

(a) Land Use District. The entire Convention Center Expansion and Stadium Planned District shall be located in the Convention Center Expansion and Stadium Mixed Use District subject to the use regulations in Section 1521.0302.

(b) Convention Center Expansion and Stadium Mixed Use (CCESPD-MU). This district accommodates mixed-use development that supports an integrated Convention Center Expansion and Stadium and related uses, including without limitation accessory uses, active commercial uses, urban open space, and outdoor activities.

## BALLOT MEASURE (continued)

### §1521.0302 Use Regulations

#### (a) Previously conforming Land Uses and Structures

Prior to the development of an integrated Convention Center Expansion and Stadium, land uses and structures that were legally established under previous regulations but that do not conform to the land use regulations of this Article may continue to exist and operate, and the structures may be renovated, remodeled, and/or interior tenant improvements constructed provided the gross floor area is not increased. A change of use that does not expand the gross floor area of an existing structure is allowed.

#### (b) Permitted Land Uses

Uses Permitted by Right. The following uses are permitted by right in the Convention Center Expansion and Stadium Planned District and shall not require a Site Development Permit, Neighborhood Use Permit, Conditional Use Permit, or other similar permit.

##### (1) Integrated Convention Center Expansion and Stadium

that may be used for conventions, exhibitions, trade shows, conferences, meetings, banquets, civic events, pageants, patriotic celebrations, public and private gatherings, weddings, live entertainment, concerts, festivals, fairs, public markets, exhibitions, outdoor activities, and other similar uses;

##### (2) Active commercial uses;

(3) Alcoholic beverage sales and service for on-site consumption within general seating, lounge seating, club seating, suites, concourses, bona-fide eating establishments, restaurants, cafés, sidewalk cafés, lounges, bars, clubs, banquets, concession stands, kiosks, pushcarts, mobile food trucks and other establishments (indoor or outdoor) located throughout and within the Convention Center Expansion and Stadium Planned District, within sponsor(s), promotional and hospitality tents, pavilions and exhibits within the Convention Center Expansion and Stadium Planned District, and within other eating and drinking establishments within the Convention Center Expansion and Stadium Planned District;

(4) Athletic training, practice uses, facilities and fields, and fitness facilities and gyms;

##### (5) Child care facility;

(6) Cultural institutions and cultural uses including, but not limited to, museums, hall of fame, displays, memorabilia facilities, sports and entertainment experience facilities, facilities supporting public tours of the Convention Center Expansion and Stadium, and accessory uses;

(7) Eating and drinking establishments including, but not limited to, bona-fide eating establishments, cafés, sidewalk cafés, lounges, bars, clubs, banquet, catering services, concession stands, and other establishments (indoor and outdoor) for food and beverage sales and service;

(8) Fireworks and other special pyrotechnical and lighting effects in connection with events in the Convention Center Expansion and Stadium Planned District;

(9) Kiosks, pushcarts, mobile food trucks, tents, and similar spectator facilities, including but not limited to, food sales, beverage, retail sales, entertainment and other amenities throughout the Convention Center Expansion and Stadium Planned District;

##### (10) Live entertainment;

(11) Medical offices and medical treatment facilities as accessory uses to permitted uses including sports teams and athletic uses;

(12) Offices as accessory uses to the Convention Center Expansion and Stadium, convention, sports, athletic teams, entertainment, media, and other permitted uses;

## BALLOT MEASURE (continued)

### §1521.0302 Use Regulations

#### (a) Previously conforming Land Uses and Structures

Prior to the development of an integrated Convention Center Expansion and Stadium, land uses and structures that were legally established under previous regulations but that do not conform to the land use regulations of this Article may continue to exist and operate, and the structures may be renovated, remodeled, and/or interior tenant improvements constructed provided the gross floor area is not increased. A change of use that does not expand the gross floor area of an existing structure is allowed.

#### (b) Permitted Land Uses

Uses Permitted by Right. The following uses are permitted by right in the Convention Center Expansion and Stadium Planned District and shall not require a Site Development Permit, Neighborhood Use Permit, Conditional Use Permit, or other similar permit.

##### (1) Integrated Convention Center Expansion and Stadium

that may be used for conventions, exhibitions, trade shows, conferences, meetings, banquets, civic events, pageants, patriotic celebrations, public and private gatherings, weddings, live entertainment, concerts, festivals, fairs, public markets, exhibitions, outdoor activities, and other similar uses;

##### (2) Active commercial uses;

(3) Alcoholic beverage sales and service for on-site consumption within general seating, loge seating, club seating, suites, concourses, bona-fide eating establishments, restaurants, cafés, sidewalk cafés, lounges, bars, clubs, banquets, concession stands, kiosks, pushcarts, mobile food trucks and other establishments (indoor or outdoor) located throughout and within the Convention Center Expansion and Stadium Planned District, within sponsor(s), promotional and hospitality tents, pavilions and exhibits within the Convention Center Expansion and Stadium Planned District, and within other eating and drinking establishments within the Convention Center Expansion and Stadium Planned District;

(4) Athletic training, practice uses, facilities and fields, and fitness facilities and gyms;

(5) Child care facility;

(6) Cultural institutions and cultural uses including, but not limited to, museums, hall of fame, displays, memorabilia facilities, sports and entertainment experience facilities, facilities supporting public tours of the Convention Center Expansion and Stadium, and accessory uses;

(7) Eating and drinking establishments including, but not limited to, bona-fide eating establishments, cafés, sidewalk cafés, lounges, bars, clubs, banquet, catering services, concession stands, and other establishments (indoor and outdoor) for food and beverage sales and service;

(8) Fireworks and other special pyrotechnical and lighting effects in connection with events in the Convention Center Expansion and Stadium Planned District;

(9) Kiosks, pushcarts, mobile food trucks, tents, and similar spectator facilities, including but not limited to, food sales, beverage, retail sales, entertainment and other amenities throughout the Convention Center Expansion and Stadium Planned District;

(10) Live entertainment;

(11) Medical offices and medical treatment facilities as accessory uses to permitted uses including sports teams and athletic uses;

(12) Offices as accessory uses to the Convention Center Expansion and Stadium, convention, sports, athletic teams, entertainment, media, and other permitted uses;

## BALLOT MEASURE (continued)

- (13) Outdoor stages, and other similar facilities and venues for outdoor activities;
- (14) Public assemblies, facilities and uses (indoor and outdoor) including, but not limited to, tailgating, outdoor activities, live entertainment, concerts, festivals, fairs, public and private gatherings, public markets, exhibitions, conventions, conferences, meetings, banquets, civic events, weddings, pageants, patriotic celebrations, and other similar uses;
- (15) Public safety facilities;
- (16) Retail stores, food sales, kiosks, pushcarts, and similar facilities and uses including, but not limited to, the sale or rental of products or services associated with any uses allowed within the Convention Center Expansion and Stadium Planned District and the sale of merchandise, souvenirs and novelties associated with the athletic teams, conventions, concerts, entertainment events and activities within the Convention Center Expansion and Stadium Planned District;
- (17) Signs, including but not limited to, advertising display signs and electronic message center signs;
- (18) Special events and temporary uses, including but not limited to, carnivals, circuses, parades, outdoor performances, and other outdoor activities;
- (19) Storage and other accessory structures and accessory uses as are customary and usual in connection with the permitted land uses;
- (20) Studios and facilities for motion picture, television and radio broadcasting, film or tape reproductions, closed circuit, cable or pay television or radio satellite transmission, pay-per-view, wireless networks, Internet, world wide web (including video streaming), and similar rights by whatever means or process, now existing or later developed, for preserving, transmitting, disseminating or reproducing data, images, audio, and other information for hearing or viewing, and on-site media studios and facilities, including, but not limited to, pre-event, half-time, post-event features and associated activities;
- (21) Surface and subterranean parking areas, multi-level parking structures, shared parking facilities, parking entry facilities, including but not limited to, parking payment structures, public plazas, and transit facilities;
- (22) Telecommunication facilities, including, but not limited to, antennas, transmission, transmitter, repeater, switching stations, uplinks, downlinks, cell towers, satellite dishes, microwave facilities, and other facilities related to the transmission of media, including but not limited to, the broadcast of events;
- (23) Temporary filming activities;
- (24) Temporary and mobile broadcast and video facilities and equipment, and video displays in outdoor areas, including but not limited to, parking areas;
- (25) Temporary and/or permanent sponsor(s), promotional and hospitality tents, pavilions and exhibits; and
- (26) Other similar uses consistent with the intent of the Convention Center Expansion and Stadium Planned District as may be approved by the City Manager or his/her designee.

### §1521.0303 Property Development Regulations

#### (a) Regulations

The following property development regulations shall apply to the Convention Center Expansion and Stadium Planned District.

##### (1) Floor Area Ratio (FAR)



## BALLOT MEASURE (continued)

### §1521.0302 Use Regulations

#### (a) Previously conforming Land Uses and Structures

Prior to the development of an integrated Convention Center Expansion and Stadium, land uses and structures that were legally established under previous regulations but that do not conform to the land use regulations of this Article may continue to exist and operate, and the structures may be renovated, remodeled, and/or interior tenant improvements constructed provided the gross floor area is not increased. A change of use that does not expand the gross floor area of an existing structure is allowed.

#### (b) Permitted Land Uses

Uses Permitted by Right. The following uses are permitted by right in the Convention Center Expansion and Stadium Planned District and shall not require a Site Development Permit, Neighborhood Use Permit, Conditional Use Permit, or other similar permit.

##### (1) Integrated Convention Center Expansion and Stadium

that may be used for conventions, exhibitions, trade shows, conferences, meetings, banquets, civic events, pageants, patriotic celebrations, public and private gatherings, weddings, live entertainment, concerts, festivals, fairs, public markets, exhibitions, outdoor activities, and other similar uses.

##### (2) Active commercial uses.

(3) Alcoholic beverage sales and service for on-site consumption within general seating, lounge seating, club seating, suites, concourses, bona-fide eating establishments, restaurants, cafés, sidewalk cafés, lounges, bars, clubs, banquets, concession stands, kiosks, pushcarts, mobile food trucks and other establishments (indoor or outdoor) located throughout and within the Convention Center Expansion and Stadium Planned District, within sponsor(s), promotional and hospitality tents, pavilions and exhibits within the Convention Center Expansion and Stadium Planned District, and within other eating and drinking establishments within the Convention Center Expansion and Stadium Planned District.

(4) Athletic training, practice uses, facilities and fields, and fitness facilities and gyms.

(5) Child care facility.

(6) Cultural institutions and cultural uses including, but not limited to, museums, hall of fame, displays, memorabilia facilities, sports and entertainment experience facilities, facilities supporting public tours of the Convention Center Expansion and Stadium, and accessory uses.

(7) Eating and drinking establishments including, but not limited to, bona-fide eating establishments, cafés, sidewalk cafés, lounges, bars, clubs, banquet, catering services, concession stands, and other establishments (indoor and outdoor) for food and beverage sales and service.

(8) Fireworks and other special pyrotechnical and lighting effects in connection with events in the Convention Center Expansion and Stadium Planned District.

(9) Kiosks, pushcarts, mobile food trucks, tents, and similar spectator facilities, including but not limited to, food sales, beverage, retail sales, entertainment and other amenities throughout the Convention Center Expansion and Stadium Planned District.

(10) Live entertainment.

(11) Medical offices and medical treatment facilities as accessory uses to permitted uses including sports teams and athletic uses.

(12) Offices as accessory uses to the Convention Center Expansion and Stadium, convention, sports, athletic teams, entertainment, media, and other permitted uses.

## BALLOT MEASURE (continued)

- (13) Outdoor stages, and other similar facilities and venues for outdoor activities;
- (14) Public assemblies, facilities and uses (indoor and outdoor) including, but not limited to, tailgating, outdoor activities, live entertainment, concerts, festivals, fairs, public and private gatherings, public markets, exhibitions, conventions, conferences, meetings, banquets, civic events, weddings, pageants, patriotic celebrations, and other similar uses;
- (15) Public safety facilities;
- (16) Retail stores, food sales, kiosks, pushcarts, and similar facilities and uses including, but not limited to, the sale or rental of products or services associated with any uses allowed within the Convention Center Expansion and Stadium Planned District and the sale of merchandise, souvenirs and novelties associated with the athletic teams, conventions, concerts, entertainment events and activities within the Convention Center Expansion and Stadium Planned District;
- (17) Signs, including but not limited to, advertising display signs and electronic message center signs;
- (18) Special events and temporary uses, including but not limited to, carnivals, circuses, parades, outdoor performances, and other outdoor activities;
- (19) Storage and other accessory structures and accessory uses as are customary and usual in connection with the permitted land uses;
- (20) Studios and facilities for motion picture, television and radio broadcasting, film or tape reproductions, closed circuit, cable or pay television or radio satellite transmission, pay-per-view, wireless networks, Internet, world wide web (including video streaming), and similar rights by whatever means or process, now existing or later developed, for preserving, transmitting, disseminating or reproducing data, images, audio, and other information for hearing or viewing, and on-site media studios and facilities, including, but not limited to, pre-event, half-time, post-event features and associated activities;
- (21) Surface and subterranean parking areas, multi-level parking structures, shared parking facilities, parking entry facilities, including but not limited to, parking payment structures, public plazas, and transit facilities;
- (22) Telecommunication facilities, including, but not limited to, antennas, transmission, transmitter, repeater, switching stations, uplinks, downlinks, cell towers, satellite dishes, microwave facilities, and other facilities related to the transmission of media, including but not limited to, the broadcast of events;
- (23) Temporary filming activities;
- (24) Temporary and mobile broadcast and video facilities and equipment, and video displays in outdoor areas, including but not limited to, parking areas;
- (25) Temporary and/or permanent sponsor(s), promotional and hospitality tents, pavilions and exhibits; and
- (26) Other similar uses consistent with the intent of the Convention Center Expansion and Stadium Planned District as may be approved by the City Manager or his/her designee.

### §1521.0303 Property Development Regulations

#### (a) Regulations

The following property development regulations shall apply to the *Convention Center Expansion and Stadium Planned District*.

- (1) Floor Area Ratio (FAR)

## BALLOT MEASURE (continued)

A Floor Area Ratio (FAR) of 4.0 shall be the maximum development intensity in the Convention Center Expansion and Stadium Planned District with the following exemptions:

- (A) Stadium and its accessory uses, including without limitation concourse and concession areas, locker rooms, training areas, meeting rooms, office, storage areas, and mechanical rooms, shall not count as gross floor area.
  - (B) Designated historic resources shall not count as gross floor area if the designated historic resource is rehabilitated or relocated and incorporated into the District.
  - (C) Mechanical penthouses shall not count as gross floor area when architecturally integrated into the overall building design.
  - (D) Phantom floors shall not count as gross floor area.
  - (E) Roof decks shall not count as gross floor area unless three (3) or more of the perimeter walls enclosing the area exceed six (6) feet in height for non-transparent materials or twelve (12) feet in height for transparent materials.
  - (F) Public safety facilities shall not count as gross floor area.
  - (G) Above-grade and below-grade parking and loading areas shall not count as gross floor area.
  - (H) Urban open space, atria and multi-level interior enclosed spaces and areas shall not count as gross floor area.
- (2) Permitted Heights
- (A) Heights for structures in the Convention Center Expansion and Stadium Planned District shall not exceed three hundred fifty (350) feet, excluding architectural features, scoreboards, structured roof canopies, flagpoles, and lighting facilities which may exceed the three hundred fifty (350) foot height limit by up to fifty (50) feet.
  - (B) The height of the structures shall be measured from the average of the highest and lowest grades of the site to the top of the roof excluding uninhabited architectural projections.
- (3) Minimum lot size and lot coverage. Minimum lot size or lot coverage requirements shall not apply in the Convention Center Expansion and Stadium Planned District.
- (4) Setbacks. There shall be no minimum front yard, side yard, interior, or rear yard setbacks.
- (5) Permitted Projections.
- (A) Subsurface structures within the public right-of-way may project up to three (3) feet from the curb, or further if permitted by the City.
  - (B) Occupied and non-occupied structures may extend over all sidewalks up to the curb-line, above an elevation of thirty (30) feet as measured from the finished sidewalk elevation at the curb-line to the building above.
- (6) Street activation. A minimum of fifteen percent (15%) of ground-floor street frontage shall contain active commercial uses.
- (7) Street wall
- (A) Street wall height. No maximum street wall height shall apply.
  - (B) Street wall facade. The street wall facade should be architecturally modulated to create visual interest and diversity to be pedestrian-friendly.

## BALLOT MEASURE (continued)

- (C) Pedestrian entrances. At least thirty-three percent (33%), as measured as a percentage of the actual linear footage of the building perimeter, of each side of the ground floor frontage of the first story building walls that face a public street should be devoted to pedestrian entrances, visually open fence, or windows affording views into the stadium concourses, or active commercial uses, if feasible. All blank façades should be enhanced by architectural detailing, artwork, landscaping, signage or similar features having visual interest.
- (8) Urban open space. The development is encouraged to incorporate urban open space open to the sky at the street level.
- (9) Fences and Freestanding Walls. Fences and freestanding walls may not exceed twenty (20) feet in height above adjacent finished grade.

### §1521.0304 Urban Design Guidelines

#### (a) Convention Center Expansion and Stadium Design Guidelines

The following guidelines are suggested for consideration in the design process for development within the Convention Center Expansion and Stadium Planned District and are not mandatory.

- (1) Character. The following strategies form the basis of the design of buildings, streetscapes, plazas, and urban open spaces within the District:
  - (A) Scale and Feeling of Public Space. Create a pedestrian scale appropriate for a small number of people as well as larger crowds.
  - (B) Language and Vocabulary of the District. Employ elements to reinforce the spatial structure of the district, to convey the symbolism of the Convention Center Expansion and Stadium Planned District, and to provide information and directions.
  - (C) Territoriality of Public Space. All spaces should have a sense of ownership.
  - (D) Composition and Juxtaposition of Elements. Buildings, streetscape improvements, and landscaping should be designed to create a memorable experience.
- (2) Building materials. Structures should be clad in durable high-grade materials (stone, tile, metal, brick, glass or similar) and these materials should wrap corners of exposed interior property line walls a minimum of three (3) feet. Exit corridors, garage openings, and all recesses should provide a finished appearance to the street.
- (3) Utilities. Electrical transformers and generators may be located above-grade if located on private property outside the public right-of-way. Electrical transformers and generators should be located below-grade if within the public right-of-way. If located within a below-grade vault within the public right-of-way, the access hatch to the vault should be located at least five (5) feet back from the street curb, except that a minimum width access hatch may be located less than five (5) feet from the street curb if it does not interfere with the placement of street trees. Areas housing trash, storage, or other utility services should be located in the garage or be screened from view from the public right-of-way and adjoining developments, except for utilities required to be exposed by the City or utility company.

Backflow prevention devices should be located in a building alcove, landscaped area, or utility room within the building, outside of the public right-of-way, and screened from view. Utility services should not be located above grade in

**BALLOT MEASURE (continued)**

the public right-of-way unless no feasible alternative would better protect a designated historic resource.

- (4) Blank walls. Blank walls on the ground level of buildings should be limited in order to provide a pleasant and rich pedestrian experience.
- (5) Rooftops
  - (A) Penthouse space, mechanical equipment, stair and elevator overruns, emergency helipads, vertical roof attachments, and decorative roof construction are allowed to achieve distinctive building tops, which should be designed as an integral part of the architectural design.
  - (B) Mechanical equipment, appurtenances, and access areas should be grouped and architecturally screened consistent with the overall composition of the building.
- (6) Lighting. Lighting for construction and operation of uses within the Convention Center Expansion and Stadium Planned District, including within the Convention Center Expansion and Stadium, shall be regulated solely by this Article and the environmental design features applicable to the Convention Center Expansion and Stadium Mixed- Use District (Appendix 15A to Chapter 15 of the Downtown Community Plan), notwithstanding any other provision of the San Diego Municipal Code or any other law of the City to the contrary.
- (7) Noise. Noise from construction and operation of uses within the Convention Center Expansion and Stadium Planned District, including within the Convention Center Expansion and Stadium, shall be regulated solely by this Article and the environmental design features applicable to the Convention Center Expansion and Stadium Mixed- Use District (Appendix 15A to Chapter 15 of the Downtown Community Plan), notwithstanding any other provision of the San Diego Municipal Code or any other law of the City to the contrary.

**Article 21: The Convention Center Expansion and Stadium Planned District**

**Division 4: General and Supplemental Regulations**

**§1521.0401 Off-Street Parking and Loading Regulations**

- (a) Applicability. Notwithstanding any other provision of the San Diego Municipal Code or any other law of the City to the contrary, solely the off-street parking regulations of this Section 1521.0401 shall apply to uses within the Convention Center Expansion and Stadium Planned District.
- (b) Off-Street Parking Space and Loading Bay Requirements. The parking requirements in Table 1521-04A and Section 1521.0401 shall apply to uses in the Convention Center Expansion and Stadium Planned District.
- (c) Parking spaces shall be provided on a shared-use basis to avoid an oversupply of parking that would deter transit use and shall be approved as part of the Convention Center Expansion and Stadium Development Permit. A shared parking demand study shall not be required.

**TABLE 1521-04A  
NON-RESIDENTIAL OFF-STREET PARKING SPACE REQUIREMENTS**

Use Category	Minimum Required	Notes
<u>Convention Center Expansion and Stadium Planned District base requirement</u>	<u>1,300 parking spaces (which includes replacement of existing baseball stadium parking within the District)</u>	

**BALLOT MEASURE (continued)**

Use Category	Minimum Required	Notes
<u>Convention Center Expansion</u>	No additional above the Planned District base requirement	<u>Convention Center Expansion</u> shall be exempt beyond the Planned District base requirement
<u>Stadium</u>	Exempt	<u>Stadium</u> shall be exempt beyond the Planned District base requirement
<u>Accessory uses</u>	Exempt	<u>Accessory uses</u> within the <u>Convention Center Expansion</u> and <u>Stadium</u> shall be exempt from providing additional parking
<u>Office</u>	Exempt	Offices are <u>accessory use</u> within the <u>Convention Center Expansion</u> and <u>Stadium</u> and exempt from providing additional parking.
<u>Retail</u>	Exempt	Retail spaces shall be exempt beyond the Planned District base requirement.
<u>Eating and drinking establishments</u>	Exempt	<u>Eating and drinking establishments</u> shall be exempt beyond the Planned District base requirement.

(1) Motorcycle and Bicycle Parking: Motorcycle, and bicycle parking spaces should be provided.

(2) Off-street Loading.

(A) For developments (other than the Convention Center Expansion and Stadium) containing 30,000 to 100,000 square feet of commercial space, one off-street loading bay shall be provided that shall be a minimum of thirty (30) feet deep, fourteen (14) feet wide, and fourteen (14) feet tall (measured from the inside walls).

(B) For the Convention Center Expansion and Stadium.

(i) The number and size of loading bays should be as appropriate for efficient operation of the Convention Center Expansion and Stadium as determined by the applicant.

(ii) Loading bays should provide direct access into the internal circulation system of the Convention Center Expansion and Stadium;

(iii) Loading bays should share the parking access driveway, unless separate driveways better facilitate access to the loading bay and parking areas and decrease potential conflicts; and

(iv) Loading bay location should minimize traffic conflicts.

(d) Existing Buildings

## BALLOT MEASURE (continued)

Existing buildings may be converted from one land use to another without providing additional parking spaces.

(e) Subterranean Garages and Basements: Encroachments in the public right-of-way may be permitted as part of the Convention Center Expansion and Stadium Development Permit subject to the following additional criteria:

- (1) Underground encroachments located more than eight (8) feet below the top of the sidewalk shall not be located within five (5) feet from the curb face, except to accommodate access hatches to underground vaults, unless otherwise permitted by the City. Such hatches shall be located to avoid interference with street tree planting.
- (2) No encroachment shall be allowed to conflict with any approved plan for street tree planting and shall maintain a clear zone for such planting for a depth of eight (8) feet at the required locations, unless otherwise permitted by the City.

(f) Structured parking facility guidelines

Above-grade parking facilities in the Convention Center Expansion and Stadium Planned District should conform to the following standards:

- (1) Parking located above the ground level should comply with the following:
  - (A) Roof-top parking is allowed.
  - (B) Any open areas in the exterior façade of the structure should be designed as an integral component of the overall architecture of the development.
- (2) All interior surfaces of a parking structure visible from the exterior of the garage should be painted.
- (3) All duct work or utility functions serving a parking structure should be screened from view from the public right-of-way.

(g) Parking Space Standards

All parking spaces required by this Section shall meet City standards. Tandem spaces and mechanical automobile lifts may be incorporated in the development.

(h) Driveway Slopes and Security Gates

Driveway slopes shall meet City standards. There shall be a transition behind the public right-of-way not to exceed a gradient of five percent (5%) for a distance of ten (10) feet. Security gates shall be located a minimum distance of ten (10) feet from the property line, and the door swing from any security gate shall not encroach into the ten (10) foot required minimum distance from the property line.

### §1521.0402 Landscaping and Equipment Screening Guidelines

(a) Purpose: Landscaping for the Convention Center Expansion and Stadium should strive to conserve energy by the provision of shade trees over streets, sidewalks, parking areas, and other paving; to conserve water through low-water-using planting and irrigation design; and to improve the appearance of the built environment by increasing the quality and quantity of landscaping visible from public rights-of-way, and adjacent properties, with the emphasis on landscaping as viewed from public rights-of-way.

(b) All ground level refuse storage and mechanical equipment should be screened from view from the public right-of-way by walls, fences, buildings, landscaping or combinations thereof to a height of six (6) feet.

(c) All on-site open space or setback areas should include areas of landscaping or architectural enhancement.

(d) Mechanical equipment or appurtenances on the roof should be architecturally screened, enclosed, or painted to blend with the roof surface.

## BALLOT MEASURE (continued)

Existing buildings may be converted from one land use to another without providing additional parking spaces.

(e) Subterranean Garages and Basements. *Encroachments* in the *public right-of-way* may be permitted as part of the *Convention Center Expansion and Stadium Development Permit* subject to the following additional criteria:

(1) Underground *encroachments* located more than eight (8) feet below the top of the sidewalk shall not be located within five (5) feet from the curb face, except to accommodate access hatches to underground vaults, unless otherwise permitted by the City. Such hatches shall be located to avoid interference with *street* tree planting.

(2) No *encroachment* shall be allowed to conflict with any approved plan for *street* tree planting and shall maintain a clear zone for such planting for a depth of eight (8) feet at the required locations, unless otherwise permitted by the City.

(f) *Structured parking* facility guidelines

Above-grade parking facilities in the *Convention Center Expansion and Stadium Planned District* should conform to the following standards:

(1) Parking located above the ground level should comply with the following:

(A) Roof-top parking is allowed.

(B) Any open areas in the exterior *façade* of the *structure* should be designed as an integral component of the overall architecture of the *development*.

(2) All interior surfaces of a parking *structure* visible from the exterior of the garage should be painted.

(3) All duct work or utility functions serving a parking *structure* should be *screened* from view from the *public right-of-way*.

(g) Parking Space Standards

All parking spaces required by this Section shall meet City standards. Tandem spaces and mechanical automobile lifts may be incorporated in the *development*.

(h) Driveway Slopes and Security Gates

Driveway slopes shall meet City standards. There shall be a transition behind the *public right-of-way* not to exceed a gradient of five percent (5%) for a distance of ten (10) feet. Security gates shall be located a minimum distance of ten (10) feet from the *property line*, and the door swing from any security gate shall not encroach into the ten (10) foot required minimum distance from the *property line*.

### §1521.0402 Landscaping and Equipment Screening Guidelines

(a) Purpose. Landscaping for the *Convention Center Expansion and Stadium* should strive to conserve energy by the provision of shade trees over *streets*, sidewalks, parking areas, and other paving; to conserve water through low-water-using planting and irrigation design; and to improve the appearance of the built environment by increasing the quality and quantity of landscaping visible from *public rights-of-way*, and adjacent properties, with the emphasis on landscaping as viewed from *public rights-of-way*.

(b) All ground-level refuse storage and mechanical equipment should be *screened* from view from the *public right-of-way* by walls, *fences*, buildings, landscaping or combinations thereof to a height of six (6) feet.

(c) All on-site open space or *setback* areas should include areas of landscaping or architectural enhancement.

(d) Mechanical equipment or appurtenances on the roof should be architecturally *screened*, enclosed, or painted to blend with the roof surface.



## BALLOT MEASURE (continued)

### §1521.0403 Sign Regulations

(a) Objectives. Signs within the Convention Center Expansion and Stadium Planned District should be consistent with the following objectives:

- (1) All signs should be appropriately related in size, shape, materials, letters, colors, and illumination, to be complementary to, and in scale with, the buildings on which they are placed. The design of the signs should reflect and complement the use of the building to the extent possible; and
- (2) Signs should be designed and placed to be compatible with the theme, visual quality, and overall character of the Convention Center Expansion and Stadium Planned District.

#### (b) Applicability

- (1) Notwithstanding any provision of the San Diego Municipal Code or any other law of the City to the contrary, solely the regulations in this Section shall apply to signs on the premises in the Convention Center Expansion and Stadium Planned District.

(c) Comprehensive Sign Plan Process for Signs in the Convention Center Expansion and Stadium Planned District.

#### (1) Application and Review

(A) An application for a Convention Center Expansion and Stadium Development Permit for a comprehensive sign plan shall be made to the City Manager or his/her designee in accordance with the requirements of this Article and shall be decided in accordance with the process described in Section 1521.0202, except that the application for a comprehensive sign plan, which may be submitted and reviewed in phases at the applicant's request, shall be subject to a single-stage advisory design review. An application for a Convention Center Expansion and Stadium Development Permit for a comprehensive sign plan may be submitted before, concurrently with, or following an application for a Convention Center Expansion and Stadium Development Permit for the Convention Center Expansion and Stadium.

(B) Sign design review. The comprehensive sign plan, which may be submitted and reviewed in phases, shall be subject to a single-stage advisory design review by the City Manager or his/her designee (which for purposes of advisory design review may include, without limitation, Civic San Diego). The advisory design review process shall consist of the submission of design development drawings for the signs.

(C) Decision. The City Manager or his/her designee shall issue the decision within forty-five (45) days of the completion of advisory design review on the Convention Center Expansion and Stadium Development Permit for the comprehensive sign plan. A Convention Center Expansion and Stadium Development Permit shall be granted if the City Manager or his/her designee determines that the proposed comprehensive sign plan, as submitted or modified, whether in total or in phases, is consistent with this Section.

#### (d) Sign Permits

(1) When a Sign Permit is Required. After obtaining a Convention Center Expansion and Stadium Development Permit for the comprehensive sign plan, an applicant shall obtain a sign permit pursuant to the following requirements for the installation or alteration of any sign, except for those signs specifically exempted in Section 1521.0403(d)(2) below.

(2) Exemptions from a Sign Permit. A sign permit is not required for the following signs or activities:

## BALLOT MEASURE (continued)

- (A) Changing the copy of a sign or maintenance of a sign that does not involve structural or electrical changes;
  - (B) Interior signs;
  - (C) Public utility and safety signs that are required by law;
  - (D) Signs that are required by law, other than public utility and safety signs that do not exceed the minimum dimensions specified by law;
  - (E) Real estate signs that are not illuminated;
  - (F) Construction site signs that are not illuminated;
  - (G) Nameplate identification signs and combination name plates and address signs with letters that do not exceed three (3) inches in height, are not illuminated, and do not exceed four (4) square feet in area;
  - (H) Accessory warning signs that provide warnings such as "no parking," "watch dogs," and "security service" that are not illuminated, do not exceed twelve (12) square feet in area, and do not project over a public right-of-way;
  - (I) Window signs;
  - (J) Tablets, memorials, and cornerstones that are built into the walls of a building, and provide information such as the name of the building and the date of construction;
  - (K) Bulletin boards for charitable or religious organizations provided that the signs do not exceed sixteen (16) square feet in area, do not project over a public right-of-way, and are not illuminated; and
  - (L) Temporary on-site banners, streamers, and pennants.
- (3) General Rules for Sign Permits
- (A) A separate sign permit is required for each sign on the premises unless the City Manager or his/her designee determines a single sign permit may be appropriate for more than one sign.
  - (B) A sign permit will include authorization for any electrical work within the sign. If a structural or electrical engineering analysis is required for a structure because of the proposed sign, the analysis must be approved by the Building Official.
  - (C) If the installation of a sign requires modification of a structure, a building permit may also be required.
- (4) Decision Process for Sign Permits. A decision on a sign permit application shall be made to the City Manager or his/her designee in accordance with Process One. The sign permit shall be approved if the decision maker determines that the work described in the permit application, specifications, and any other submitted data complies with the signage requirements of this Section and any applicable construction regulations.
- (5) Timeliness of Decision. A decision by the City Manager or his/her designee to approve or deny a sign permit shall be made no more than forty-five (45) business days after the date of submittal of the application and shall not be unduly delayed following approval of a Convention Center Expansion and Stadium Development Permit for the comprehensive sign plan. When a decision is not made within the required time, and the applicant does not waive time, the application shall be deemed denied. The timeliness requirement may be waived by the applicant.
- (6) Issuance of a Sign Permit

## BALLOT MEASURE (continued)

- (A) The sign permit may be issued after all approvals have been obtained. The applicant shall pay all generally applicable City standard fees for a sign permit.
- (B) A sign permit shall not be issued for any sign that requires a Convention Center Expansion and Stadium Development Permit until the Convention Center Expansion and Stadium Development Permit has been issued for the comprehensive sign plan.

### (e) Definitions

Advertising display sign means a sign where the sign copy does not pertain to the use of the property, a product sold, or the sale or lease of the property on which the sign is displayed and which does not identify the place of business as purveyor of the merchandise or services advertised on the sign. Such signs include vehicle-mounted signs and billboards.

Aerial view sign means a sign that is applied on a roof or placed horizontally approximately parallel with the plane of the playing field intended to be viewed from above.

Architectural digital display sign means a sign which is integrated with, or otherwise integrated into, any architectural component of a structure which is controlled by electronic process in such a manner that different copy changes are instantaneously displayed on the sign. Architectural digital display signs may display still images, scrolling images, or moving images including video and animation, utilizing a series or grid of lights and/or projection onto the surface of the structure that may be changed by electronic means, including cathode ray, light emitting diode display (LED), plasma screen, liquid crystal display (LCD), fiber optics, projection, or other electronic media or technology now existing or later developed. Architectural digital display signs may contain individual pixels of a digital image, or other electronic media or technology now existing or later developed, that are embedded into the architectural components of the structure separated vertically or horizontally from one another, and may allow outward views from and within the supporting structure. Such a design may include digital mesh or netting, individual large scale illuminated pixels or other electronic media or technology now existing or later developed covering a building wall diffused behind translucent material forming an aggregate image, or horizontal or vertical banding integrated into the structure's architecture, which when viewed from a distance may be read as a unified image.

Banner means a printed or electronic banner, pennant, streamer, or other similar display.

Convention Center Expansion naming identification sign means a sign attached to the Convention Center Expansion or any component of a structure within the Convention Center Expansion and Stadium Planned District identifying an entity or entities for which the Convention Center Expansion or portions thereof is named, including but not limited to, entries, exhibit halls, plazas, and concession areas.

Electronic message center sign means a sign which is controlled by electronic process in such a manner that different copy changes are instantaneously displayed on the sign. An electronic message center sign may display still images, scrolling images, or moving images including video and animation, utilizing a series or grid of lights that may be changed by electronic means, including cathode ray, light emitting diode display (LED), plasma screen, liquid crystal display (LCD), fiber optics, or other electronic media or technology now existing or later developed. An electronic message center sign may include advertising display signs, information signs, Convention Center Expansion naming identification signs, and Stadium naming identification signs.

Exempt signs shall mean the following signs within the Convention Center Expansion and Stadium Planned District:

- Aerial view signs;

## BALLOT MEASURE (continued)

- Construction site signs;
- Information signs;
- Internal signs;
- Signs of twenty-five (25) square feet or less on kiosks, pushcarts or tents;
- Signs required by law;
- Signs on temporary or mobile broadcast facilities;
- Temporary signs; and
- Window signs.

Ground sign means any sign supported wholly by uprights, braces, or poles in or on the ground including poster panels, painted bulletins, signs on fences, and signs on structures other than buildings and canopies.

Information sign means traffic, directional, way finding, warning or other informational signs.

Internal sign means a sign within or outside of the Convention Center Expansion and Stadium building, structure, tent, pavilion, or other permanent or temporary structure, intended to be primarily viewed from within the Convention Center Expansion and Stadium Planned-District. Internal signs shall include, but are not limited to:

- Signs inside the Stadium viewed from seating areas and on concourse areas including general, club and suite seating and concourses, and food and beverage establishments within the Stadium.
- Signs inside of the Convention Center Expansion.
- All scoreboards and signs that are integral with such scoreboards directed toward the interior of the structure; the "back" of the scoreboards primarily visible from outside of the Convention Center Expansion and Stadium shall not be internal signs.

Internally illuminated sign means a sign that has the light source enclosed within it so the source is not visible to the eye.

Projecting sign means a sign other than any type of wall sign that is attached to and extends from the face of a structure.

Roof sign means a sign erected upon, against, or directly above a roof or roof eave, atop or above the parapet, or on an architectural adjunct above the roof or roof eave.

Sign means any identification, description, illustration, or device, illuminated or non-illuminated, that is visible from the public right-of-way or is located on private property and exposed to the public and which directs attention to a product, place, activity, person, institution, business, or solicitation, including any permanently installed or situated merchandise with the exception of window displays, and any emblem, painting, banner, pennant, placard, or temporary sign designed to advertise, identify, or convey information.

Sign copy means the words, symbols, or emblems on a sign surface, whether in permanent or removable form.

Sign copy area means the area of the smallest geometric figure that can enclose the words, symbols, or emblems of a wall sign. For internally illuminated signs, the entire illuminated sign face is the sign copy area.

Sign face means the entire area of a sign on which sign copy could be placed for roof signs, ground signs, projecting signs, and advertising display signs.

Sign permit means a permit to install or alter any sign pursuant to this Article.

## BALLOT MEASURE (continued)

Stadium naming identification sign means a sign attached to the Stadium or any component of a structure within the Convention Center Expansion and Stadium Planned District identifying an entity or entities for which the Stadium or portions thereof is named, including but not limited to, stadium gates, levels, plazas, and concession areas.

Temporary sign means a sign that is not permanently affixed to the ground or a building and is used for special events or temporary uses.

Wall sign means a sign attached to, or a sign copy area on, a structure or adjunct of a structure, including an equipment screen or dormer that completely screens the mechanical equipment of the structure, and has its exposed sign face parallel or approximately parallel to the plane of the structure to which the sign is attached.

### (f) General Sign Regulations

(1) Exempt signs on the premises shall be permitted and exempt from the provisions of this Section. Notwithstanding the foregoing, exempt signs shall obtain a sign permit pursuant to Section 1521.0403(d), unless also exempted from the sign permit requirement per Section 1521.0403(d)(2), and shall be subject to the structural regulations in Section 1521.0403(k) and sign maintenance regulations in Section 1521.0403(l).

(2) All non-exempt signs and sign structures shall be permitted in conformance with a comprehensive sign plan approved pursuant to a Convention Center Expansion and Stadium Development Permit approved pursuant to the procedures as provided in this Section.

(3) The sign copy area of individual signs shall not be limited. The total sign copy area allowed within the Convention Center Expansion and Stadium Planned District shall not exceed sixty-five thousand (65,000) square feet, excluding all architectural digital display signs, Convention Center Expansion naming identification signs, electronic message center signs, exempt signs, and Stadium naming identification signs.

(4) Wall signs affixed on a building or structure shall not project more than twenty-five (25) feet above the height of the building wall or roof eave.

(5) Free-standing signs, excluding banner signs, Convention Center Expansion naming identification signs, electronic message center signs, and Stadium naming identification signs shall not exceed twenty-five (25) feet in height above adjacent finished grade.

(6) Signs may be incorporated into guest and vehicle entry gates and parking payment structures for parking areas.

### (g) Electronic message center signs

Electronic message center signs are permitted subject to the following regulations:

#### (1) General criteria

(A) Two (2) two-sided electronic message center signs may be constructed within the Convention Center Expansion and Stadium Planned District subject to the requirements of this Section.

(B) The criteria for electronic message center signs shall not apply to architectural digital display signs, Convention Center Expansion naming identification signs, or Stadium naming identification signs which are regulated separately as set forth below.

#### (2) Design standards

(A) The two (2) electronic message center signs shall be separated by at least four hundred (400) feet from one another.

## BALLOT MEASURE (continued)

(B) The *electronic message center signs* shall not exceed a height of one hundred twenty-five (125) feet above adjacent finished *grade* and a width of sixty (60) feet.

### (3) Brightness, refresh rate, and beam spread:

(A) The brightness of *electronic message center signs* shall not exceed eight hundred (800) candelas/meter sq. from sunset to sunrise. Beginning thirty (30) minutes prior to sunset and concluding thirty (30) minutes after sunset, the *electronic message center signs* shall transition smoothly at a consistent rate to the permitted eight hundred (800) candelas/meter sq. level. Beginning thirty (30) minutes prior to sunrise and concluding thirty (30) minutes after sunrise, the *electronic message center signs* shall transition smoothly at a consistent rate to the daytime brightness level. The *electronic message center signs* shall be turned off from 2:00 a.m. to 6:00 a.m.

(B) *Electronic message center signs* shall refresh no more frequently than once every four (4) seconds, with an interval between messages of not less than one (1) second, and with an unchanged illumination level.

(C) Maximum vertical viewing angle performance shall be +15/-50 degrees of center of the LED. Shades / louvers should be designed to maximize the downward (negative) viewing angle while limiting the upward (positive) viewing angle.

### (h) *Architectural digital display signs*

*Architectural digital display signs* are permitted subject to the following regulations:

#### (1) General criteria

(A) *Architectural digital display signs* shall be attached directly to and made integral with the architectural components of the integrated *Convention Center Expansion and Stadium*.

#### (2) Design standards

(A) No limitation on the individual *sign copy area* or *sign* dimensions shall apply for an *architectural digital display sign* and the individual *sign copy area* for an *architectural digital display sign* expressly shall not be counted toward the total *sign copy area* allowed by the general provisions of this Section.

### (i) *Advertising display signs*

*Advertising display signs* are permitted subject to the following regulations:

(1) *Advertising display signs* may be *ground signs, wall signs, projecting signs, electronic message center signs, and banners*.

(2) Free-standing *advertising display signs* shall not be permitted except as part of the *electronic message center signs* permitted by this Section.

(3) *Advertising display signs* shall count toward the total *sign copy area* allowed by the general provisions of this Section, except the *sign copy area* of *advertising display signs* that are also part of an *electronic message center sign* shall not count toward the total *sign copy area* allowed by the general provisions of this Section.

### (j) *Banner signs* and similar displays

*Banner signs* are permitted subject to the following regulations:

(1) *Banner signs* shall maintain at least eight (8) feet clearance above adjacent finished *grade* and shall not create hazards.

## BALLOT MEASURE (continued)

- (2) Banner signs shall be constructed of high quality materials and secured to poles or structures so as to withstand strong winds.

### (k) Structural Regulations

- (1) Signs and sign-supporting structures shall be listed by a recognized testing laboratory and constructed in compliance with the requirements of the Uniform Building Code and National Electrical Code as adopted by the City of San Diego. Exposed-tube neon signs shall be constructed and installed in compliance with the National Electrical Code as adopted by the City of San Diego.
- (2) Guy wires or angle iron structures that are used as sign supports shall not be visible from public right-of-way. Sign supports shall appear to be an integral part of the sign.
- (3) The supports for all signs or sign structures shall be placed entirely within the boundaries of the premises on which the sign is located.

### (l) Sign Maintenance Regulations

All signs shall comply with the following maintenance regulations whether or not a sign permit is required.

- (1) All signs and sign supports, including decorative covers, shall be maintained in a clean and safe condition.
- (2) Signs shall be maintained in a graffiti-free condition.
- (3) The owner shall keep the display area of all painted signs neatly printed or posted at all times and shall correct any painting, fading, chipping, peeling, or flaking paint or plastic and mechanical or structural defect.
- (4) Paint or debris associated with signs shall not litter public property or public right-of-way.

## §1521.0404 Separately Regulated Uses

### (a) On-Site Alcohol Beverage Sales

Notwithstanding any other provision of the San Diego Municipal Code or any other law of the City to the contrary, the sale of alcoholic beverages for on-site consumption within the Convention Center Expansion and Stadium Planned District shall solely be subject to the following regulations and applicable state regulations:

- (1) The integrated Convention Center Expansion and Stadium may provide alcoholic beverages on the premises by right subject to the regulations in this Section.
- (2) Bona-fide eating establishments that offer made-to-order food during business hours may provide alcoholic beverages on the premises by right.
- (3) Non bona-fide eating establishments, bars, eating and drinking establishments, outdoor activities, promotional and hospitality tents, pavilions and exhibits, and other similar accessory uses to the integrated Convention Center Expansion and Stadium may provide alcoholic beverages on the premises by right.

### (b) Live entertainment

Notwithstanding any other provision of the San Diego Municipal Code or any other law of the City to the contrary, live entertainment and events within the Convention Center Expansion and Stadium Planned District shall not be subject to any special event or police license requirements and shall be subject to the following regulations:

- (1) The Convention Center Expansion and Stadium and accessory uses including eating and drinking establishments may provide live entertainment by right.
- (2) Consistent with Section 1521.0304(a)(7) of this Article, sound and amplification equipment associated with live entertainment shall be regulated solely by this

**BALLOT MEASURE (continued)**

Article and the environmental design features in Appendix 15A to Chapter 15 of the Downtown Community Plan, notwithstanding any other provision of the San Diego Municipal Code or any other law of the City to the contrary.

**(c) Designated historical resource**

Notwithstanding any other provision of the San Diego Municipal Code or any other law of the City to the contrary, if the development of a Convention Center Expansion and Stadium Center Expansion and Stadium Development Permit for the development shall provide the authorization and permit for such alteration or relocation. No additional review or permit shall be required.

C. Section 59.5.0401 of Division 4 of Article 9.5 of Chapter 5 of the San Diego Municipal Code is amended to read:

**§59.5.0401 Sound Level Limits**

- (a) It shall be unlawful for any person to cause noise by any means to the extent that the one-hour average sound level exceeds the applicable limit given in the following table, at any location in the City of San Diego on or beyond the boundaries of the property on which the noise is produced. The noise subject to these limits is that part of the total noise at the specified location that is due solely to the action of said person.

**TABLE OF APPLICABLE LIMITS**

Land Use	Time of Day	One-Hour Average Sound Level (decibels)
1. Single-Family Residential	7 a.m. to 7 p.m.	50
	7 p.m. to 10 p.m.	45
	10 p.m. to 7 a.m.	40
2. Multi-Family Residential (Up to a maximum density of 1/2000)	7 a.m. to 7 p.m.	55
	7 p.m. to 10 p.m.	50
	10 p.m. to 7 a.m.	45
3. All other Residential	7 a.m. to 7 p.m.	60
	7 p.m. to 10 p.m.	55
	10 p.m. to 7 a.m.	50
4. Commercial	7 a.m. to 7 p.m.	65
	7 p.m. to 10 p.m.	60
	10 p.m. to 7 a.m.	60
5. Industrial or Agricultural	any time	75

- (b) The sound level limit at a location on a boundary between two zoning districts is the arithmetic mean of the respective limits for the two districts. Permissible construction noise level limits shall be governed by Sections 59.5.0404 of this article.
- (c) Fixed-location public utility distribution or transmission facilities located on or adjacent to a property line shall be subject to the noise level limits of Part A. of this section, measured at or beyond six feet from the boundary of the easement upon which the equipment is located.



## BALLOT MEASURE (continued)

- (d) This section does not apply to firework displays authorized by permit from the Fire Department.
- (e) This section does not apply to noise generated by helicopters at heliports or helistops authorized by a conditional use permit, nor to any roller coaster operated on City-owned parkland.
- (f) This section does not apply to noise generated by uses within the Convention Center Expansion and Stadium Planned District.

D. Section 59.5.0404 of Division 4 of Article 9.5 of Chapter 5 of the San Diego Municipal Code is amended to read:

### **§59.5.0404 Construction Noise**

- (a) It shall be unlawful for any person, between the hours of 7:00 p.m. of any day and 7:00 a.m. of the following day, or on legal holidays as specified in Section 21.04 of the San Diego Municipal Code, with exception of Columbus Day and Washington's Birthday, or on Sundays, to erect, construct, demolish, excavate for, alter or repair any building or structure in such a manner as to create disturbing, excessive or offensive noise unless a permit has been applied for and granted beforehand by the Noise Abatement and Control Administrator. In granting such permit, the Administrator shall consider whether the construction noise in the vicinity of the proposed work site would be less objectionable at night than during the daytime because of different population densities or different neighboring activities; whether obstruction and interference with traffic particularly on streets of major importance, would be less objectionable at night than during the daytime; whether the type of work to be performed emits noises at such a low level as to not cause significant disturbances in the vicinity of the work site; the character and nature of the neighborhood of the proposed work site; whether great economic hardship would occur if the work were spread over a longer time; whether proposed night work is in the general public interest; and he shall prescribe such conditions, working times, types of construction equipment to be used, and permissible noise levels as he deems to be required in the public interest.
- (b) Except as provided in subsection C. hereof, it shall be unlawful for any person, including The City of San Diego, to conduct any construction activity so as to cause, at or beyond the property lines of any property zoned residential, an average sound level greater than 75 decibels during the 12-hour period from 7:00 a.m. to 7:00 p.m.
- (c) The provisions of subsection B. of this section shall not apply to construction equipment used in connection with emergency work, provided the Administrator is notified within 48 hours after commencement of work.
- (d) This section does not apply to construction activity within the Convention Center Expansion and Stadium Planned District.

E. Section 35.0101 of Division 1 of Article 5 of Chapter 3 of the San Diego Municipal Code is amended to read:

### **§35.0101 Purpose and Intent**

- (a) It is the purpose and intent of the City Council and the voters that there shall be imposed a tax on Transients.
- (b) Except as provided in subdivision (c), the proceeds of the tax shall be used for promoting the City of San Diego, including the planning, construction, maintenance and operation of tourist-related cultural, recreational and convention facilities, as more particularly set forth in Chapter 3, Article 5, Division 1, and for those additional general governmental purposes as more particularly set forth in Chapter 3, Article 5, Division 1, as the City Council may from time to time provide in accordance with the Charter of the City and the City Council's appropriation ordinance.

## BALLOT MEASURE (continued)

- (c) Certain proceeds of the tax, as specifically provided for herein, shall be dedicated for the financing, planning, construction, maintenance and operation of an integrated convention center expansion and stadium to further enhance the City's position as one of the premier tourist, convention, sports and entertainment regions in the country.

F. Section 35.0102 of Division 1 of Article 5 of Chapter 3 of the San Diego Municipal Code is amended to read:

### **§35.0102 Definitions**

The following definitions are applicable to Chapter 3, Article 5, Division 1:

"Bonds" means debt instruments, revenue bonds (including without limitation transient occupancy tax revenue bonds), notes, debentures, or other similar financial instruments authorized to be issued by the City and payable from Funds as provided in this Division.

"Campground" means any park or real property where a Person may locate a tent, trailer, tent trailer, pick-up, camper, or other similar temporary structure for the purposes of lodging, dwelling, or sleeping, whether or not water, electricity, or sanitary facilities are provided.

"Collected" means the time at which the Rent is earned if an Operator uses the accrual basis of accounting, or the time at which Rent is received if an Operator uses the cash basis of accounting.

"Convention Center Expansion" means a convention center exhibition facility containing approximately three hundred and eighty-five thousand (385,000) net square feet of exhibition hall, ballroom and meeting room space, into which the Stadium will be integrated, which convention center facility may also include offices, restaurants, cafes, kitchen facilities, storage areas, parking, and other ancillary uses customarily part of a convention center facility, to be located on the Convention Center Expansion Site, and after completion of the Convention Center Expansion any other convention center projects or related facilities subsequently approved by the City.

"Convention Center Expansion and Stadium Fund" means that certain special trust fund established in the City Treasury pursuant to Section 35.0140.

"Convention Center Expansion Construction Costs" means the costs of developing and constructing a Convention Center Expansion, designed and sized to accommodate the integration of the Stadium, including without limitation excavation, foundation and structural systems, façade and architectural elements, mechanical, electrical and plumbing systems, heating, ventilation and air conditioning, elevators and escalators, interior improvements, furniture, fixtures and equipment, permit fees and costs, architectural and engineering costs, environmental compliance costs, insurance costs, construction and project management costs, legal, finance and consultant costs, a reasonable and customary contingency, and other costs customarily involved in the development and construction of facilities of similar size, scope and complexity.

"Convention Center Expansion Infrastructure Costs" means all costs for infrastructure, public works, utilities, and similar facilities or structures customarily associated with the construction of facilities of similar size, scope and complexity to a Convention Center Expansion, designed and sized to accommodate the integration of the Stadium, including without limitation road and highway improvements, electrical, water, sewer, storm drain, gas, cable, internet, and other utilities, and environmental design features to reduce impacts. "Convention Center Expansion Infrastructure Costs" shall include the related acquisition costs for real property associated with infrastructure, public works, utilities, and similar facilities or structures, legal, finance and consultant costs, permit fees and costs, architectural and engineering costs, insurance costs, construction and project management costs, title insurance costs, property remediation costs, a reasonable and customary contingency, and other costs customarily involved in the construction and development of such infrastructure, utilities, public works, and similar facilities or structures.

"Convention Center Expansion Land Costs" means all costs associated with acquiring all real property interests of the Convention Center Expansion Site including without limitation real property acquisition costs, legal, finance and consultant costs, title insurance, property remediation costs, relocation costs for existing uses on the Site, a reasonable and customary contingency, and other costs customarily involved in the acquisition of real property.

## BALLOT MEASURE (continued)

"Convention Center Expansion Site" means that certain site bounded by K Street on the North, 16<sup>th</sup> Street on the East, Imperial Avenue on the South and 12<sup>th</sup> Avenue on the West.

"Convention Center Expansion/Stadium Integration Allocation" shall be a single one-time three hundred fifty million (\$350,000,000) monetary contribution to the development and construction of the Stadium from the Convention Center Expansion and Stadium Fund, to enable the development of a joint use facility whereby the Stadium may be used for various convention events, civic events, sporting events and entertainment events (including professional football) to promote tourism in San Diego, (e.g., among other integrated and joint use features, building the Stadium floor with loading capacity sufficient to accommodate convention center uses; adding dual use food service facilities including multi-use restaurants and club areas, suites, other joint use areas, incorporating conference space, meeting rooms and other facilities, utilities and building systems to be utilized jointly). The Convention Center/Stadium Integration Allocation shall be adjusted annually (or portion thereof) by a construction cost index (e.g., Engineer News Record) with the first adjustment to be made on January 1, 2018 (for the proceeding annual period) and subsequent adjustments to be made ending on the commencement of construction of the Convention Center Expansion and Stadium.

"CPI" means the Consumer Price Index for All Urban Consumers for San Diego, or similar index if the Consumer Price Index for All Urban Consumers for San Diego is not published any longer.

"Financing Agreements" means lease agreements, installment sale agreements, irrevocable assignments or other similar financing agreements or contracts entered into by the City and payable from Funds as provided in this Article.

"Financing Costs" means those costs incurred in the issuance of Bonds or the execution and delivery of Financing Agreements utilizing available Funds from the Convention Center Expansion and Stadium Fund used to finance first any Convention Center Expansion Construction Costs, Convention Center Expansion Infrastructure Costs, Convention Center Expansion Land Costs and the Convention Center Expansion/Stadium Integration Allocation, and, after completion of a Convention Center Expansion and Stadium, Financing Costs incurred in the issuance of Bonds or the execution and delivery of Financing Agreements for the construction, expansion, maintenance or capital repair of any existing or future convention center facilities located in the City. Financing Costs shall include without limitation, principal repayment, interest costs, legal, finance and consultant costs, costs of issuance, required debt service reserve funds, or reserve fund insurance policy, bond insurance, credit enhancement, pre-construction reserves, contingencies, working capital reserves and/or reserves to manage fluctuations in funds deposited in the Convention Center Expansion and Stadium Fund.

"Funds" means the proceeds of the tax imposed pursuant to Section 35.0109 hereof and deposited in the Convention Center Expansion and Stadium Fund.

"Governmental Entity" means the governmental entity that will own, finance, develop, construct and operate, or assist the City in financing, developing, constructing and operating, an integrated Convention Center Expansion and Stadium. The Governmental Entity may be a new joint powers authority entered into by the City pursuant to the Joint Exercise of Powers Act, California Government Code section 6500 et seq., or may be an existing joint powers authority to which the City is a member, any other public entity or not-for-profit corporation formed by the City.

"Hotel" means any structure or any portion of any structure which is occupied, or intended or designed for occupancy, by Transients for dwelling, lodging, or sleeping purposes, and is held out as such to the public. "Hotel" does not mean any hospital, convalescent home, or sanitarium.

"Occupancy" means the use or possession, or the right to the use or possession, of any room, or portion thereof, in any Hotel, or space in a Recreational Vehicle Park, or Campground for dwelling, lodging, or sleeping purposes.

"Operator" means the Person who is the proprietor of the Hotel, Recreational Vehicle Park, or Campground, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. "Operator" includes a managing agent, a resident manager, or a resident agent, of any type or character, other than an employee without management responsibility.

## BALLOT MEASURE (continued)

"Primary Lessee" means a professional football entity that enters into a lease of the Stadium for a term of not less than thirty (30) years and provides, arranges and/or coordinates the Private Sector Stadium Contribution.

"Private Sector Stadium Contribution" means six hundred fifty million dollars (\$650,000,000) from non-governmental sources for Stadium Construction Costs and Stadium Infrastructure Costs. The six hundred fifty million dollars (\$650,000,000) from non-governmental sources for Stadium Construction Costs and Stadium Infrastructure Costs shall be adjusted annually (or portion thereof) by a construction cost index (e.g., Engineer News Record) with the first adjustment to be made on January 1, 2018 (for the proceeding annual period) and subsequent adjustments to be made ending on the commencement of construction of the Convention Center Expansion and Stadium. The form of the contribution from the non-governmental sources may be cash or cash equivalents, pre-development expenses incurred for the Stadium by the Primary Lessee, proceeds from sale of personal seat licenses/stadium builders licenses, or other rights granting the holder of the license the right to purchase tickets to events to be held at the Stadium, lease revenues (including without limitation pre-paid rent), contractually committed revenues associated with the use and operation of the Stadium, including committed revenues from sponsors, suite licensees and concessionaires, committed construction loans, or other committed funding sources, whether such funding is provided directly from the non-governmental sources or through the Governmental Entity or other governmental agency participating in the financing or construction of the Stadium.

"Recreational Vehicle" means any passenger vehicle, house car, trailer coach, camper, or camper trailer, as defined in California Vehicle Code sections 242, 243, 362, 465, 635, or California Health and Safety Code section 18010.

"Recreational Vehicle Park" means any park or location where a Recreational Vehicle may be parked for the purposes of lodging, dwelling, or sleeping, whether or not water, electricity, or sanitary hookup facilities are provided. A "Recreational Vehicle Park" may include a Campground.

"Rent" means the total consideration charged to a Transient as shown on the guest receipt for the occupancy of a room, or portion thereof, in a Hotel, or a space in a Recreational Vehicle Park or Campground. "Rent" includes charges for utility and sewer hookups, equipment, (such as rollaway beds, cribs and television sets, and similar items), and in-room services (such as movies and other services not subject to California taxes), valued in money, whether received or to be received in money, goods, labor, or otherwise. "Rent" includes all receipts, cash, credits, property, and services of any kind or nature without any deduction therefrom.

"Stadium" means a first class professional football stadium on the Convention Center Expansion Site with a permanent seating capacity of up to approximately sixty-five thousand (65,000) seats, including club seats, loge seats, suite seating and other premium seats, with an expansion seating capacity of up to approximately seventy-five thousand (75,000) seats for larger events, including Super Bowls, and other ancillary uses, including without limitation, concession areas, restaurants, bars, clubs, retail stores, kiosks, media facilities, athletic training and medical facilities, locker rooms, offices, meeting rooms, banquet facilities, ticketing facilities, on-site and off-site signage, scoreboards, and other ancillary facilities customarily part of a stadium of a quality necessary to host professional football, professional soccer, Olympic, collegiate, and civic events, and conventions, exhibitions and concerts.

"Stadium Construction Costs" means the incremental costs of developing and constructing a Stadium, designed to be integrated into a Convention Center Expansion, including without limitation the incremental costs attributed to the Stadium of excavation, foundation and structural systems, façade and architectural elements, mechanical, electrical and plumbing systems, heating, ventilation and air conditioning, elevators and escalators, interior improvements, furniture, fixtures and equipment, seats, architectural and engineering costs, permit fees and costs, environmental compliance costs, insurance costs, construction and project management costs, legal, finance and consultant costs, a reasonable and customary contingency, and other costs customarily involved in the development and construction of facilities of similar size, scope and complexity. "Stadium Construction Costs" shall only include the incremental costs directly attributable to the development and construction of the Stadium over and above the costs of developing and constructing the Convention Center Expansion. For the purpose of determining "incremental costs," allocations of costs shall

## BALLOT MEASURE (continued)

be based on incremental development and construction costs directly attributable to the Stadium. "Stadium Construction Costs" shall not include any Convention Center Expansion Land Costs or Convention Center Expansion Construction Costs.

"Stadium Infrastructure Costs" means all incremental costs for infrastructure, public works, utilities, and similar facilities or structures customarily associated with the construction of facilities of similar size, scope and complexity to a Stadium, including without limitation road and highway improvements, supplying electrical, water, sewer, storm drain, gas, cable, internet, and other utilities, and environmental measures to reduce impacts. "Stadium Infrastructure Costs" also includes the related acquisition costs for real property associated with infrastructure, public works, utilities, and similar facilities or structures, legal, finance and consultant costs, architectural and engineering costs, permit fees and costs, insurance costs, construction and project management costs, title insurance costs, property remediation costs, a reasonable and customary contingency, and other costs customarily involved in the construction and development of such infrastructure, utilities, public works, and similar facilities or structures. "Stadium Infrastructure Costs" shall only include the incremental costs directly attributable to the construction of the Stadium Infrastructure over and above the costs of developing and constructing the Convention Center Expansion Infrastructure. For the purpose of determining "incremental costs" allocations of costs shall be based on incremental development and construction costs directly attributable to the Stadium Infrastructure. Stadium Infrastructure Costs shall not include any Convention Center Expansion Land Costs or Convention Center Expansion Infrastructure Costs.

"Successor to Operator" means any person who acquires the right to operate a hotel, recreational vehicle park, or campground from a predecessor Operator, directly or indirectly, by whatever means, including purchase, foreclosure, operation of lease, or other means. A transfer of an ownership or management interest in a hotel, recreational vehicle park, or campground wherein the facility continues to operate as such, either continuously or for business interruption not exceeding thirty days, shall constitute a succession for purposes of this division.

"Transient" means any Person who exercises Occupancy, or is entitled to Occupancy, by reason of concession, permit, right of access, license, or other agreement for a period of less than one (1) month. A month is defined as the period of consecutive days from the first calendar day of Occupancy in any month to the same calendar day in the next month following, or the last day of the next month following if no corresponding calendar day exists.

G. Section 35.0109 is added to Division 1 of Article 5 of Chapter 3 of the San Diego Municipal Code, to read:

### **§35.0109 - Additional Tax Imposed**

(a) Notwithstanding the tax imposed by any other Section of this Division and in addition thereto, for the privilege of Occupancy in any Hotel, any Recreational Vehicle Park, or any Campground, each Transient is subject to and shall pay an additional tax in the amount of six percent (6%) of the Rent charged by the Operator commencing January 1, 2017. Five-sixths (5/6) of all of the revenues collected by the City pursuant to this subsection (a) shall be deposited in the Convention Center Expansion and Stadium Fund created pursuant to Section 35.0140 and one-sixth (1/6) of all revenues collected by the City pursuant to this subsection (a) shall be deposited in the San Diego Tourism and Marketing Fund created pursuant to Section 35.0141.

(b) On the earlier of (i) fifty (50) years, (ii) the full repayment of any Bonds or Financing Agreements and associated Financing Costs, or (iii) the termination of a professional football team playing its home games in Qualcomm Stadium for a period of more than two consecutive calendar years (other than as a result of force majeure related to the use of Qualcomm Stadium) before the completion of the Stadium, the additional tax imposed by subsection (a) above shall be reduced to three percent (3%) of the Rent charged by Operators. Two-thirds (2/3) of all revenues collected by the City pursuant to this subsection (b) shall be deposited in the San Diego Tourism and Marketing Fund created pursuant to Section 35.0141 and one-third (1/3) of all of the revenues collected by the City pursuant to this subsection (b) shall be deposited in the Convention Center Expansion and Stadium Fund created pursuant to Section 35.0140.

## BALLOT MEASURE (continued)

(c) In the event that the requirements set forth in subsection 35.0140(c) are not satisfied on or before January 1, 2027, the additional tax established by subsection (a) above shall be reduced to three percent (3%) of the Rent charged by the Operator commencing January 1, 2027. Two-thirds (2/3) of all revenues collected by the City pursuant to this subsection (c) shall be deposited in the San Diego Tourism and Marketing Fund created pursuant to Section 35.0141 and one-third (1/3) of all of the revenues collected by the City pursuant to this subsection (c) shall be deposited in the General Fund of the City.

H. Section 35.0140 is added to Division 1 of Article 5 of Chapter 3 of the San Diego Municipal Code, to read:

### **§35.0140 Convention Center Expansion and Stadium Fund**

(a) The Convention Center Expansion and Stadium Fund ("Convention Center Expansion and Stadium Fund") is hereby created as a special trust fund in the City Treasury. Funds in the Convention Center Expansion and Stadium Fund shall not be loaned, transferred, diverted, or appropriated, either directly or indirectly, for any purpose inconsistent with this section.

(b) All Funds remaining in the Convention Center Expansion and Stadium Fund after payment of the costs incurred in the administration of this section shall be available solely for Convention Center Expansion Construction Costs, Convention Center Expansion Infrastructure Costs, Convention Center Expansion Land Costs, Convention Center Expansion/Stadium Integration Allocation, and Financing Costs and as specifically provided for in subsections (c) through (g) below.

(c) The Convention Center Expansion and Stadium Fund may only be utilized for the purposes set forth in this section and, except as provided for in subsection (e) below, upon the satisfaction of the requirements of this subsection:

(i) Except as specifically provided for in subsection (e) below, use of the Revenues from the Convention Center Expansion and Stadium Fund shall be subject to the concurrent contribution of the Private Sector Stadium Contribution.

(ii) Except as specifically provided for in subsection (e) below, use of Funds from the Convention Center Expansion and Stadium Fund shall be subject to the execution by a professional football team of a covenant and agreement for the benefit of the Governmental Entity agreeing not to relocate to another jurisdiction for a period of not less than thirty (30) years and to play substantially all of its home professional football games in the Stadium.

(iii) Except as specifically provided for in subsection (e) below, use of Funds from the Convention Center Expansion and Stadium Fund shall be subject to execution of a lease for the Stadium between the Governmental Entity and the Primary Lessee with a term of not less than thirty (30) years.

(d) The Convention Center Expansion and Stadium Fund shall be a special revenue fund of the City and may be used only for the purposes established by this section and for the uses established by this section. To the extent permitted by law, Funds deposited into the Convention Center Expansion and Stadium Fund may be pledged, used and/or assigned to make lease payments, installment payments and/or other contractual payments with respect to Financing Agreements or to the payment of debt service on Bonds, the proceeds of which may be used by the City for the purposes and uses set forth in this section. In no event shall the General Fund of the City be responsible for the payment of debt service on Bonds or payments pursuant to any Financing Agreements executed and delivered or issued by the City or the Governmental Entity for the purposes and uses set forth in this section. In no event shall the issuance of Bonds or Financing Agreements involve the pledge of the faith and credit of the City, but shall be limited obligations payable solely from specified revenues, moneys and assets. The issuance of Bonds or execution of Financing Agreements shall not directly, indirectly, or contingently obligate the City to levy or pledge any form of taxation other than the tax imposed pursuant to Section 35.0109. The City is expressly authorized to execute such instruments as necessary to effectuate the pledge and assignment granted pursuant to this subsection.

(e) Prior to the commencement of construction of the Convention Center Expansion and Stadium and the issuance of Bonds or the execution and delivery of Financing Agreements by the City, two-thirds (2/3) of Funds in the Convention Center Expansion and Stadium Fund shall be deposited in a

## BALLOT MEASURE (continued)

construction fund deposit subfund within the Convention Center Expansion and Stadium Fund for use for pre-development expenses for the Convention Center Expansion and Stadium. The construction fund deposit subfund shall be released and transferred to the Governmental Entity to be used for the purposes and uses set forth in subsection (b) above upon the commencement of construction of the Convention Center Expansion and Stadium, the issuance of Bonds or the execution of Financing Agreements for the construction of the Convention Center Expansion and Stadium. Pre-development expenses shall include those costs incurred by the Governmental Entity in preparing for the development of the Convention Center Expansion and Stadium including without limitation Convention Center Expansion Land Costs, architecture and engineering costs, project management costs, consultants costs, financing costs, and legal costs. The remaining Funds in the Convention Center Expansion and Stadium Fund shall be then distributed or reserved annually in the following order and amounts:

(i) To the San Diego Tourism and Marketing Fund in an amount equal to one percent (1%) of the Rent charged by all Operators for such year;

(ii) To an operating reserve subfund of the Convention Center Expansion and Stadium Fund in an amount equal to eight percent (8%) of the annual Funds deposited in the Convention Center Expansion and Stadium Fund, to be held in trust as a reserve for the payment of operating and maintenance costs for the Convention Center Expansion and Stadium in any year when there are not sufficient funds in the Convention Center Expansion and Stadium Fund to pay Financing Costs or the amounts provided for by subsection (f)(iii) below, up to a maximum reserve of twenty-five million dollars (\$25,000,000).

(iii) To the City General Fund for any purpose as determined by the City Council.

(f) Following the commencement of construction of the Convention Center Expansion and Stadium and the issuance of Bonds or the execution and delivery of Financing Agreements by the City, Funds deposited in the Convention Center Expansion and Stadium Fund shall be used first to pay directly, or transferred to the Governmental Agency to pay, all Financing Costs, including any required reserves to satisfy debt service coverage requirements, for Bonds or Financing Agreements issued in connection with the development and construction of the Convention Center Expansion and Stadium. In any year in which there are Funds remaining in the Convention Center Expansion and Stadium Fund after the payment of Financing Costs, such excess Funds shall be distributed or reserved annually in the following order and amounts:

(i) To the San Diego Tourism and Marketing Fund in an amount equal to one percent (1%) of the Rent charged by all Operators for such year.

(ii) Prior to the completion of the Convention Center Expansion and Stadium, to an operating reserve subfund of the Convention Center Expansion and Stadium Fund in an amount equal to eight percent (8%) of the annual Funds deposited in the Convention Center Expansion and Stadium Fund, to be held in trust as a reserve for the payment of operating and maintenance costs for the Convention Center Expansion and Stadium in any year when there are not sufficient funds in the Convention Center Expansion and Stadium Fund to pay the Financing Costs or the amounts provided for by subsection (f)(iii) below, up to a maximum reserve of twenty-five million dollars (\$25,000,000) (including any amounts in the operating reserve subfund pursuant to subsection (e)(ii) above).

(iii) Upon completion of the Convention Center Expansion and Stadium, to the Governmental Entity in the amounts (on a pari passu basis) of (a) ten million dollars (\$10,000,000), increased annually by CPI, solely for operations and maintenance of the Convention Center Expansion, (b) two million dollars (\$2,000,000), increased annually by a construction cost index (e.g., Engineering News Record), solely for capital improvements and repairs to the Convention Center Expansion, (c) fifteen million dollars (\$15,000,000), increased annually by CPI solely for operations and maintenance of the Stadium, and (d) in the amount of two million dollars (\$2,000,000), increased annually by a construction cost index (e.g., Engineering News Record), solely for capital improvements and repairs for the Stadium.

(iv) To the City General Fund for any purpose as determined by the City Council.

## BALLOT MEASURE (continued)

If in any year there are not sufficient Funds in the Convention Center Expansion and Stadium Fund sufficient to pay Financing Costs and/or the amounts set forth in subsection (f)(i) through (iii), such shortfall(s) shall be immediately paid out of Funds deposited in the Convention Center Expansion and Stadium Fund in the immediately succeeding years and shall have priority in payment prior to any other amounts otherwise required to be paid pursuant to subsection (f)(i) through (iii) in such succeeding years.

(g) Nothing herein shall limit the right of the City to otherwise provide for the construction, expansion, maintenance or operation of any existing or future convention facilities located in the City. Following completion of construction of the Convention Center Expansion and Stadium, Funds remaining in the Convention Center Expansion and Stadium Fund, after payment of all Finance Costs and payment annually of amounts as provided for in (f)(i) and (iii), may be used for the construction, expansion, maintenance or operation of any existing or future convention facilities located in the City.

(h) In the event that the conditions set forth in subsection (c) above are not satisfied on or before January 1, 2027, the Funds remaining in the Convention Center Expansion and Stadium Fund as of January 1, 2027, including any amounts in the construction fund deposit subfund and the operating reserve subfund, shall be deposited in the General Fund of the City.

(i) Funds permitted to be paid or distributed pursuant to this section, may be paid or distributed on an annual, quarterly, or monthly basis, as may be required by the Bonds, Financing Agreements or for the convenience of the City or the Governmental Entity.

I. Section 35.0141 is added to Division 1 of Article 5 of Chapter 3 of the San Diego Municipal Code, to read:

### **§35.0141 San Diego Tourism and Marketing Fund**

(a) The San Diego Tourism and Marketing Fund ("Marketing Fund") is hereby created as a special trust fund in the City Treasury. Revenues in the Marketing Fund shall not be loaned, transferred, diverted, or appropriated, either directly or indirectly, for any purpose inconsistent with this section.

(b) All revenues deposited in the Marketing Fund remaining after payment of the costs incurred in the administration of this section shall be available solely for development and implementation of a tourism and convention center marketing program for the City of San Diego and the San Diego Convention Center and used in the manner and for the purposes specified in Division 25 of Article 1 of Chapter 6 of the San Diego Municipal Code regarding the San Diego Tourism Marketing District.

(A copy of Division 25 of Article 1 of Chapter 6 of the San Diego Municipal Code is attached as Exhibit C hereto.)

J. Section 35.0142 is added to Division 1 of Article 5 of Chapter 3 of the San Diego Municipal Code, to read:

### **§35.0142 Issuance of Bonds for Convention Center Expansion and Stadium**

(a) The City is authorized to issue Bonds, from time to time, payable from and secured by the Funds, the proceeds of which will be transferred to the Governmental Entity to fund the Convention Center Expansion Construction Costs, the Convention Center Expansion Infrastructure Costs, the Convention Center Expansion Land Costs, the Convention Center Expansion/Stadium Integration Allocation and the Financing Costs. The maximum bonded indebtedness pursuant to this Section, including Financing Costs, shall not exceed the total amount of the tax levied pursuant to Section 35.0109 projected over the life of the Bonds.

(b) All of the Bonds hereby authorized to be issued pursuant to this Section shall be limited obligations of the City payable solely from the Funds. Bonds issued as authorized by this Section shall not be deemed to constitute a debt or liability of the City's General Fund and shall not be secured by a pledge of the faith and credit of the City but shall be limited obligations payable solely from specified revenues, moneys and assets. The issuance of Bonds pursuant to this Section shall not directly, indirectly, or contingently obligate the City to levy or pledge any form of taxation other than the tax imposed pursuant to Section 35.0109.

(c) Bonds authorized by this Section shall be issued and shall mature at such time or times not to exceed forty (40) years, bear interest at such fixed or variable rate or rates approved by the City but not to



## BALLOT MEASURE (continued)

exceed the maximum rate permitted by law. Bonds authorized by the section shall be sold at either public or private sale and for such prices as the City shall determine.

(d) The City is hereby authorized to issue Bonds authorized by this Section for the purpose of replacing or refunding any Bonds then outstanding.

(e) The chief fiscal officer of the City shall annually prepare and file a report to the legislative body in compliance with Government Code Section 53411.

K. Section 61.2528 is added to Division 25 of Article 1 of Chapter 6 of the San Diego Municipal Code, to read:

### **§61.2528 No Levies for San Diego Tourism Marketing District Assessments**

Notwithstanding any other ordinance or resolution adopted prior to the effective date of this Section by the City Council pursuant to the San Diego Tourism Marketing District Procedural Ordinance (Division 25 of Article 1 of Chapter 6 of the San Diego Municipal Code), after the earlier of the first December 31 or the first June 30 to occur after this Section takes effect, no assessment may be levied, imposed or collected pursuant to such an ordinance or resolution.

L. Division 28 (commencing with Section 61.2801) is added to Article 1 of Chapter 6 of the San Diego Municipal Code, to read:

### **Division 28: San Diego Convention Center Expansion and Stadium Development Procedural Ordinance**

#### **§61.2801 Purpose and Intent**

The purpose and intent of this Division is to:

(a) Provide an overall structure for the development, construction and management of a Convention Center Expansion and Stadium.

(b) Recognize the City Council's authorization to enter into a joint powers authority, or use of an existing joint powers authority, or establish a City controlled entity, to be the owner and developer of the Convention Center Expansion and Stadium.

(c) Provide a process for ensuring that the financing for the development and construction of the Convention Center Expansion and Stadium, including without limitation the issuance of Bonds or execution and delivery of Financing Agreements, can be undertaken in an efficient and economical manner for the benefit of the people of San Diego.

(d) Provide standards and procedures for the management of the Convention Center Expansion and Stadium and leasing of the Stadium.

#### **§61.2802 Citation of Division**

This Division may be cited as the Convention Center Expansion and Stadium Development Procedural Ordinance.

#### **§61.2803 Rules of Construction**

This Division shall be liberally construed in order to effectuate its purpose. No error, irregularity, informality and no neglect or omission of any officer, in any procedure taken under this Division which does not directly affect the jurisdiction of the City to order the work, contract or process shall void or invalidate such work, contract or process done thereunder.

#### **§61.2804 Guiding Policies**

The City is expressly authorized to permit the development, construction, operation, maintenance, management, and financing (including the issuance of Bonds or the execution and delivery of Financing Agreements) of a Convention Center Expansion and Stadium on the Convention Center Expansion Site, provided that any and all actions and agreements by the City relating to the development, construction, operation, maintenance, management, or financing of a Convention Center Expansion and Stadium on the Convention Center Expansion Site shall be consistent with the following guiding legislative policies and minimum requirements in order to protect and serve the people of the City of San Diego and its residents by

## BALLOT MEASURE (continued)

ensuring that a Convention Center Expansion and Stadium will have a fiscal benefit to the City, including job creation, enhanced tourism, and other economic development.

(1) The City shall not pay for any Stadium Construction Costs or Stadium Infrastructure Costs, or Stadium Construction Costs or Stadium Infrastructure Costs cost overruns, if any. Contribution of the Convention Center Expansion/Stadium Integration Allocation is not part of Stadium Construction Cost. Except as specifically provided in Section 35.0140 and this ordinance, the City shall not pay for any Stadium operating, maintenance or capital improvement expenses. The City shall be reimbursed for reasonable costs incurred by the City in providing professional football event day public safety and traffic management services related to Stadium events held by the Primary Lessee. Nothing herein shall limit the City from providing routine governmental service for the Convention Center Expansion and Stadium consistent with the delivery of services generally within the City.

(2) The City Council is hereby authorized to take any and all actions, including without limitation entering into agreements, subject to and consistent with this Section, to facilitate the development, construction, operation, maintenance, management, and financing (including the issuance of Bonds or the execution and delivery of Financing Agreements) of the Convention Center Expansion and Stadium, creation of, use of, and/or participation in, a joint authority to cause the development, construction, operation, maintenance, management, and financing of the Convention Center Expansion and Stadium.

The guiding legislative policies and minimum requirements in this Division are the legislative policies of the City and provide the ways and means of accomplishing that legislative policy. Where this Division provides for any determination or approval by the City Council, such determination or approval shall be made by the City Council taking into account the purpose and intent of this Division, and shall be made on or before the Council's approval of any action or agreement for the development, construction, operation, maintenance, management, or financing of the Convention Center Expansion and Stadium on the Convention Center Expansion Site.

### §61.2806 Authorizations

(a) The City Council is hereby authorized to take any and all actions, including without limitation entering into agreements, subject to and consistent with this Division, to facilitate the development, construction, operation, maintenance, management, and financing of the Convention Center Expansion and Stadium, creation of, and participation in, a joint powers authority or other City-controlled entities to cause the development, construction, operation, maintenance, management, and financing of the Convention Center Expansion and Stadium.

(b) The City is authorized to use an existing joint powers authority or to enter into a new joint powers agreement to own and operate the Convention Center Expansion and Stadium. Such joint powers authority may be formed pursuant to the Joint Exercise of Powers Act, California Government Code section 6500 et seq.

(c) Alternatively the City Council may create a City-controlled entity to own and operate the Convention Center Expansion and Stadium.

(d) The City Council may establish a City Commission or Advisory Board to oversee the construction of the Convention Center Expansion and Stadium.

(e) The City Council shall have the right to audit the expenditure of funds to ensure that the amounts are distributed and spent in compliance with this ordinance. The City Council may bestow this authority upon the Governmental Entity.

### §61.2807 Definitions

"Bonds" has the same meaning as in San Diego Municipal Code Section 35.0102.

"Convention Center Expansion" has the same meaning as in San Diego Municipal Code Section 35.0102.

"Convention Center Expansion Construction Costs" has the same meaning as in San Diego Municipal Code Section 35.0102.

## BALLOT MEASURE (continued)

"Convention Center Expansion Infrastructure Costs" has the same meaning as in San Diego Municipal Code Section 35.0102.

"Convention Center Expansion Land Costs" has the same meaning as in San Diego Municipal Code Section 35.0102.

"Convention Center Expansion Site" has the same meaning as in San Diego Municipal Code Section 35.0102.

"Convention Center Expansion/Stadium Integration Allocation" has the same meaning as in San Diego Municipal Code Section 35.0102.

"Convention Center Expansion and Stadium Fund" shall have the same meaning as in San Diego Municipal Code Section 35.0140.

"Events" means convention events, civic events and/or other sporting events and entertainment events (excluding professional football events) held in the Stadium by the Governmental Entity.

"Financing Agreements" has the same meaning as in San Diego Municipal Code Section 35.0102.

"Financing Costs" has the same meaning as in San Diego Municipal Code Section 35.0102.

"Football Season" means the professional football season (and the thirty (30) day period prior to the commencement of the professional football season or such shorter time as agreed to by the Primary Lessee).

"Governmental Entity" has the same meaning as in San Diego Municipal Code Section 35.0102.

"Independent Review Panel" means the independent cost allocations review panel convened pursuant to Section 61.2809.

"Lease" means that certain lease between the Governmental Entity and the Primary Lessee for use of the Stadium.

"O&M Plan" means that certain operations and maintenance plan that shall be agreed to by the Government Entity and the Primary Lessee with respect to the operations and maintenance of the Stadium.

"Primary Lessee" has the same meaning as in San Diego Municipal Code Section 35.0102.

"Primary Lessee Facilities" means the Primary Lessee offices, Primary Lessee team training rooms, Primary Lessee team locker rooms, and other Primary Lessee secure areas, as agreed to between the Primary Lessee and the Governmental Entity, for the term of the Lease.

"Private Sector Stadium Contribution" has the same meaning as in San Diego Municipal Code section 35.0102.

"Stadium" has the same meaning as in San Diego Municipal Code section 35.0102.

"Stadium Construction Costs" has the same meaning as in San Diego Municipal Code section 35.0102.

"Stadium Infrastructure Costs" has the same meaning as in San Diego Municipal Code section 35.0102.

### **§61.2808 Construction Procedures and Determination of Cost Allocation**

(a) Cost allocations between the Convention Center Expansion portion of the integrated facility and the Stadium portion of the integrated facility, including allocations between Convention Center Expansion Costs, Convention Center Expansion Infrastructure Costs, Stadium Construction Costs and Stadium Infrastructure Costs, shall be determined prior to the start of construction of the Convention Center Expansion and Stadium. The purpose of the cost allocations is to determine if the Primary Lessee is required to contribute to the Governmental Entity additional amounts for Stadium Construction Costs and Stadium Infrastructure Costs in excess of the Private Sector Stadium Contribution plus the amount of the Convention Center Expansion/Stadium Integration Allocation. In no event shall the Convention Center Expansion/Stadium Integration Allocation be reduced. In no event shall the Primary Lessee be required to pay any amounts for the Convention Center Expansion Costs, Convention Center Expansion Infrastructure Costs or Convention Center Expansion Land Costs.

## BALLOT MEASURE (continued)

(b) The preliminary cost allocations shall be made at not less than ninety percent (90%) completed conceptual, schematic, and design development documents for the Convention Center Expansion and Stadium and the final cost allocation shall be based on not less than eighty percent (80%) completed construction documents for the Convention Center Expansion and Stadium.

(c) The Governmental Entity and the Primary Lessee shall each retain an independent nationally recognized third party engineer and cost estimating firm with at least twenty (20) years' experience in cost estimating structures of similar size, scope and complexity as the Convention Center Expansion and Stadium to provide cost allocations between the Convention Center Expansion and the Stadium. The Governmental Entity and the Primary Lessee shall seek to resolve any differences in allocations at each stage of preliminary review.

(d) At the completion of not less than eighty percent (80%) construction documents, the Governmental Entity and the Primary Lessee shall each make a final determination of the cost allocations, taking into account the preliminary allocations made by the estimating firms. The determination shall be in writing and in reasonable detail showing the basis for the cost allocations.

(e) If the final determinations of cost allocations of the Governmental Entity and the Primary Lessee are within five percent (5%) of each other, then the final cost allocations shall be the average of the two allocations.

(f) If the allocations of the Governmental Entity and the Primary Lessee have a difference of more than five percent (5%), the two final cost allocations shall be submitted to an Independent Review Panel. The Independent Review Panel shall then select either the Governmental Entity cost allocation or the Primary Lessee cost allocation, which shall be binding upon the parties.

### **§61.2809 Independent Review Panel**

(a) If an Independent Review Panel is required pursuant to subsection 61.2808(f), an Independent Review Panel shall be established for the limited purpose as provided for pursuant to this Section. The Independent Review Panel shall consist of five (5) members appointed by the Mayor as provided for herein. The Primary Lessee shall nominate not less than six (6) prospective members nor more than eight (8) prospective members and the Mayor shall appoint two (2) members from the prospective members nominated by the Primary Lessee. The City Council shall nominate not less than six (6) prospective members nor more than eight (8) prospective members and the Mayor shall appoint two (2) members from the prospective members nominated by the Council. The four (4) members initially appointed by the Mayor shall then nominate not less than three (3) retired jurists nor more than five (5) retired jurists to serve as the fifth member of the Independent Review Panel and the Mayor shall appoint the fifth member from those so nominated. The retired jurists nominated shall each individually have at least twenty (20) years' combined experience on the California Superior Court, Appellate Court, or Supreme Court, or any federal district or appellate court located in the state. The retired jurist appointed by the Mayor shall serve as chairperson of the panel.

(b) Other than the retired jurist, all members of the Independent Review Panel shall meet one or more of the following criteria:

(1) A licensed architect with at least twenty (20) years' experience with projects of similar size, scope and complexity as the Convention Center Expansion and Stadium.

(2) A licensed civil engineer with at least twenty (20) years' experience with projects of similar size, scope and complexity as the Convention Center Expansion and Stadium.

(3) A licensed structural engineer with at least twenty (20) years' experience with projects of similar size, scope and complexity as the Convention Center Expansion and Stadium.

(c) Decisions of the Independent Review Panel shall be made by a simple majority vote of the total membership.

(d) No member of the Independent Review Panel shall be under contract with or actively doing business with the City, the Governmental Entity or the Primary Lessee or having been under contract or

## BALLOT MEASURE (continued)

having done business with the City, the Governmental Entity or the Primary Lessee in the twelve (12) month period immediately preceding their nomination.

(e) The costs of the Independent Review Panel shall be paid for by the Primary Lessee. The Independent Review Panel shall make its selection of either the Governmental Entity's final determination of allocation of costs or the Primary Lessee's final determination of allocation of costs within sixty (60) days of submission of the final determinations by the Governmental Entity and the Primary Lessee.

(f) Neither the Governmental Entity nor the Primary Lessee shall have any right to appeal or challenge, administratively or judicially, the determination of cost allocations beyond the Independent Review Panel. No third party shall have any right to appeal or challenge, administratively or judicially, the determination of cost allocations.

(g) The final cost allocations shall not affect the amount of the Convention Center/Stadium Integration Allocation. If the final cost allocations of the Stadium Construction Costs and Stadium Infrastructure Costs exceeds the sum of the Private Sector Stadium Contribution plus the amount of Convention Center Expansion/Stadium Integration Allocation, the Primary Lessee shall be responsible for such additional cost allocations. The Primary Lessee also shall be responsible for any Stadium Construction Costs and Stadium Infrastructure Costs cost overruns, if any, above the sum of Private Sector Stadium Contribution plus the amount of Convention Center Expansion/Stadium Integration Allocation.

### **§61.2810 Construction Management**

(a) The Governmental Entity and the Primary Lessee may elect to have one or more third-party firms be retained to be a joint construction and/or project manager of the Convention Center Expansion and Stadium construction, subject to the reasonable approval of both parties. The foregoing notwithstanding, the Governmental Entity and the Primary Lessee also may each elect to have a construction and/or project manager represent their interests individually.

(b) Any third-party joint construction and/or project manager of the Convention Center Expansion and Stadium construction must be nationally recognized and have at least twenty (20) years' experience in construction management and/or project management of facilities of similar size, scope and complexity as the Convention Center Expansion and Stadium.

(c) Selection of a joint construction and/or project manager of the Convention Center Expansion and Stadium construction shall be based on depth of relevant experience, quality of the proposed construction/project management plan and overall approach, quality of proposed project team, quality of construction approach, fee, and general conditions and general requirements, and shall be subject to applicable laws for similar selections, if any.

### **§61.2811 Facility Management**

(a) The Governmental Entity and the Primary Lessee, may elect to have the Primary Lessee or its affiliate act as manager of the Stadium and common areas shared with the Convention Center Expansion, or the Governmental Entity and the Primary Lessee may elect to have a third-party firm be retained to be the manager of the Stadium and common areas shared with the Convention Center Expansion, subject to the reasonable approval of both parties.

(b) Any third-party manager of the Stadium must be nationally recognized and have at least ten (10) years' experience in managing or operating facilities of similar size, scope and complexity as the Stadium.

(c) Selection of the Stadium third-party manager shall be based on experience, quality of the management plan, quality of personnel designated for the project, and expected costs and revenues, and shall be subject to applicable laws for similar selections, if any.

### **§61.2812 Lease Items**

The lease with the Primary Lessee shall be subject to good faith negotiations between the Governmental Entity and the Primary Lessee. Principal items for the lease include the following:

(i) the Primary Lessee shall be responsible for the design and construction of the Stadium and any joint use facilities on behalf of the Governmental Entity and for all costs related to the design

## BALLOT MEASURE (continued)

and construction of the Stadium, except for the Convention Center Expansion/Stadium Integration Allocation and as provided for in this ordinance.

(ii) the Primary Lessee will have exclusive control over Primary Lessee Facilities, for the term of the Lease.

(iii) the Primary Lessee will have exclusive control and operation of the Stadium and associated common areas only during the Football Season subject to the right of the Governmental Entity to use the Stadium and associated common areas (excluding Primary Lessee Facilities) for Events, as provided for herein.

(iv) the Primary Lessee shall pay rent to the Governmental Entity in an amount equal to (a) all costs and expenses of operating and maintaining the Stadium to the extent such costs and expenses are directly attributable to professional football events conducted by the Primary Lessee, (b) the additional operating, maintenance and capital costs for the Stadium (excluding costs and expenses directly attributable to Events) over and above those funds available to the Governmental Entity as provided for in (x) and (xi) below and incurred by the Governmental Entity for operations, maintenance and capital improvements and repairs of the Stadium as required by the O&M Plan, (c) reasonable costs incurred by the City and paid by the Governmental Entity or paid directly to the City by the Primary Lessee in providing professional football event day public safety and traffic management services related to Stadium events, other than routine governmental service for the Convention Center Expansion and Stadium consistent with the delivery of services generally within the City, and (d) possessory interest taxes levied on the Stadium leasehold interest and other generally applicable City taxes and fees applicable to the Stadium paid by the Governmental Entity or paid directly to the City or County by the Primary Lessee.

(v) other than rent provided in (iv) above Primary Lessee shall not be required to pay, directly or indirectly, any additional rent, charges, fees, or exactions, other than non-discriminatory City processing fees and costs associated with issuance of permits, and non-discriminatory fees and assessments normally charged development projects in the City.

(vi) the Governmental Entity shall have the right to hold Events in the Stadium (excluding Primary Lessee Facilities) during the Football Season provided that such events do not occur on professional football game days or the day prior to such professional football game days (unless approved by Primary Lessee), such Events are coordinated with the Primary Lessee and does not otherwise interfere with the ability of the Primary Lessee to hold professional football events and such events do not damage the playing field or the Primary Lessee Facilities. Events may be subject to long-term advance booking during the Football Season through coordination with the Primary Lessee.

(vii) during the portion of the year which is outside of the Football Season, the Governmental Entity shall have exclusive use of the Stadium, other than Primary Lessee Facilities, and the Governmental Entity may utilize the Stadium (excluding Primary Lessee Facilities) for Events.

(viii) in connection with any Events held by the Governmental Entity in the Stadium during the Football Season, the Governmental Entity shall return the Stadium to the Primary Lessee in the same condition as the Stadium was in prior to use by the Governmental Entity and in the condition as required by the O&M Plan.

(ix) the Governmental Entity shall turn over the Stadium to the Primary Lessee at least thirty (30) days prior to the commencement of the Football Season (or such shorter time as agreed to by the Primary Lessee) and shall return the Stadium to the Primary Lessee in the same condition as the Stadium was in prior to use by the Governmental Entity and in the condition as required by the O&M Plan.

(x) the Governmental Entity shall use all payments specifically designated and received by the Governmental Entity under Section 35.0140 for the Stadium operations, maintenance and capital improvements and repairs of the Stadium.

(xi) the Governmental Entity shall receive all revenues and shall be responsible for paying all expenses directly attributable to Events held in the Stadium by the Governmental Entity and also shall

## BALLOT MEASURE (continued)

use net revenues earned by the Governmental Entity from sporting and entertainment events held in the Stadium by the Governmental Entity, but excluding convention events and civic events held in the Stadium, for other operations, maintenance and capital improvements and repairs of the Stadium.

(xii) the Governmental Entity shall retain all revenues and pay all expenses directly attributable to Events held in the Convention Center Expansion by the Governmental Entity and shall be responsible for all operations, maintenance and capital expenses of the Convention Center Expansion.

(xiii) the Primary Lessee shall retain and the Governmental Entity shall have no rights to revenues from Stadium naming rights, Stadium sponsorships, Stadium advertising and signage, professional football event revenues or any professional football team revenues including without limitation ticket revenues, broadcast and media revenues, team sponsorships, professional football concession revenues, merchandise revenues, professional football event parking revenues, suite and club seat revenues, or any other professional football team related revenue.

### **Section 6. Internal General Plan, Downtown Community Plan, and Municipal Code Consistency**

A. The amendments to the Downtown Community Plan, a part of the City General Plan, as set forth in Section 4 above, express the People of the City of San Diego's intent to eliminate any possible internal inconsistency within or between any elements of the General Plan, the Downtown Community Plan or any provisions contained in the Convention Center Expansion and Stadium Planned District. It is the People's intent that the Downtown Community Plan, as amended by this Initiative, constitutes an integrated, internally consistent and compatible statement of planning policies. It is the People's further intent that if and to the extent there is no exact or literal match between the General Plan, the Downtown Community Plan and the Convention Center Expansion and Stadium Planned District, those planning documents and their provisions be read and construed in full harmony with each other as provided for by this Initiative.

B. It is the People's intent that the regulations contained in Section 5.B of this Initiative be read and construed in full harmony with the General Plan and the Downtown Community Plan. To the extent that any provisions of the San Diego Municipal Code, including the Land Development Code, or any other ordinances of the City, may be inconsistent with this Initiative, the provisions of this Initiative shall govern.

### **Section 7. Implementation of this Initiative**

A. Upon the effective date of this Initiative, the City is directed to promptly take all appropriate actions needed to implement this Initiative. This Initiative is considered adopted and effective, upon the earliest date legally possible.

B. Upon the effective date of this Initiative, the provisions of Section 4 of this Initiative are hereby inserted into the Downtown Community Plan, except that if the four amendments of the General Plan permitted by state law for any calendar year have already been utilized in the year in which this Initiative becomes effective, the General Plan amendments set forth in this Initiative shall be the first amendments inserted into the General Plan on January 1 of the next year.

C. The General Plan in effect as of the filing of the Notice of Intent to Circulate this Initiative ("Filing Date") and the General Plan as amended by this Initiative, comprise an integrated, internally consistent and compatible statement of policies for the City. To ensure that the City's General Plan remains an integrated, internally consistent and compatible statement of policies for the City, any provision of the General Plan that is adopted between the Filing Date and the effective date of the General Plan amendments adopted by this Initiative shall, to the extent that such interim-enacted provision is inconsistent with the General Plan amendments adopted by this Initiative, be amended as soon as possible and in the manner and time required by state law to ensure consistency between the provisions adopted by this Initiative and other elements of the General Plan.

D. All future project approvals and other actions needed to implement the Convention Center Expansion and Stadium Planned District shall be consistent with the purpose of this Initiative, as more fully set forth in Section 3 above, to permit and implement the development, construction, operation, maintenance, management and financing of the Convention Center Expansion and Stadium Project.

## BALLOT MEASURE (continued)

### ***Section 8: Effect of Other Measures on the Same Ballot:***

A. In approving this Initiative, it is the People of the City of San Diego's intent to create a comprehensive regulatory plan to govern potential future uses and development of the Property, including the sources of funding to allow for those uses and development. If this Initiative appears on the same ballot with another measure on the same subject matter, and a majority of the voters vote in favor of both initiatives at the same election, then it is the People's intent that only that measure which receives the greatest number of affirmative votes shall control in its entirety and said other measure or measures shall be rendered void and without any legal effect. In no event shall this Initiative be interpreted in a manner that would permit its operation in conjunction with the non-conflicting provisions of another measure on the same subject matter. If this Initiative is approved by the voters but superseded by law in whole or in part by any other measure on the same subject matter approved by the voters at the same election, and such other measure is later held invalid, this Initiative shall be self-executing and given full force of law. The People of the City of San Diego expressly declare this to be our intent, regardless of any contrary language in any other ballot measure.

### ***Section 9: Interpretation and Severability***

A. This Initiative must be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, sub-section, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision does not affect the validity of the remaining portions of this Initiative. The People of the City of San Diego declare that this Initiative, and each section, sub-section, sentence, clause, phrase, part, or portion thereof, would have been signed, adopted, or passed irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases, part, or portion is found to be invalid. If any provision of this Initiative is held invalid as applied to any person or circumstance, such invalidity does not affect any application of this Initiative that can be given effect without the invalid application.

B. If any portion of this initiative is held by a court of competent jurisdiction to be invalid, we the People of the City of San Diego indicate our strong desire that: (i) the City Council use its best efforts to sustain and re-enact that portion, and (ii) the City Council implement this Initiative by taking all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Initiative, including adopting or reenacting any such portion in a manner consistent with the intent of this Initiative.

C. This Initiative must be broadly construed in order to achieve the purposes stated above. It is the intent of the People of the City of San Diego that the provisions of this Initiative be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Initiative.

### ***Section 10: Amendment.***

A. The provisions of this Initiative can be amended or repealed only by a majority of the voters of the City of San Diego voting in an election held in accordance with state law.

B. The text of existing provisions of the City of San Diego Municipal Code that are included in this Initiative for informational/reference purposes only and not modified herein, are not subject to this Section 10.

### ***Section 11: Exhibits to this Initiative.***

For ease of understanding, the Exhibits to this Initiative are:

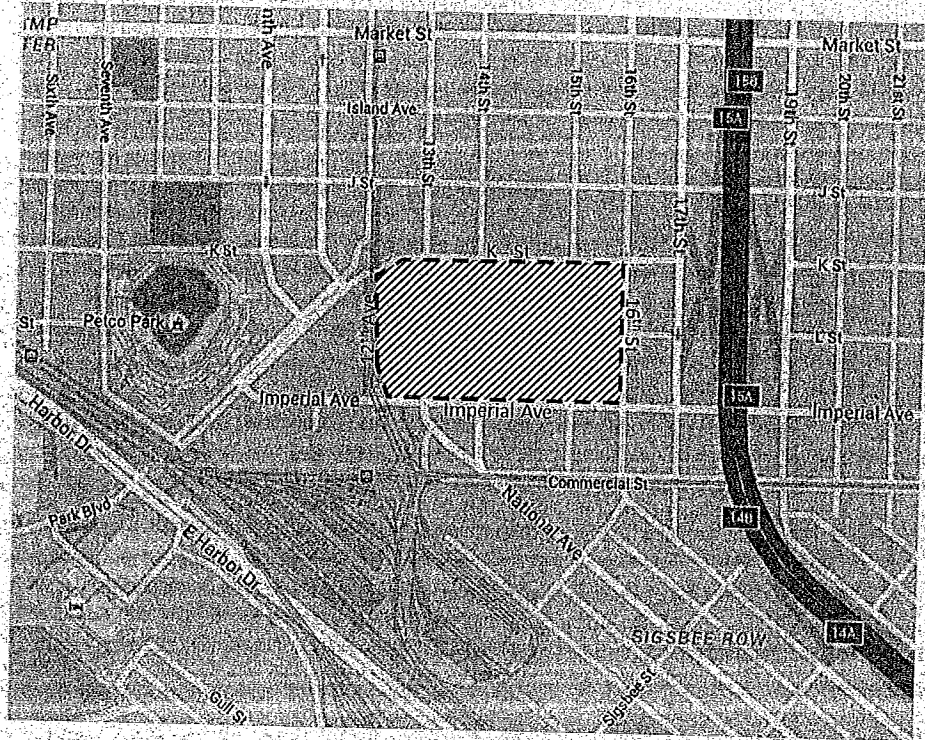
- Exhibit A: The Property
- Exhibit B: Amendment to the Zoning Map of the City of San Diego
- Exhibit C: Division 25 of Article 1 of Chapter 6 of the San Diego Municipal Code



**BALLOT MEASURE (continued)**

**EXHIBIT A**

**The Property**

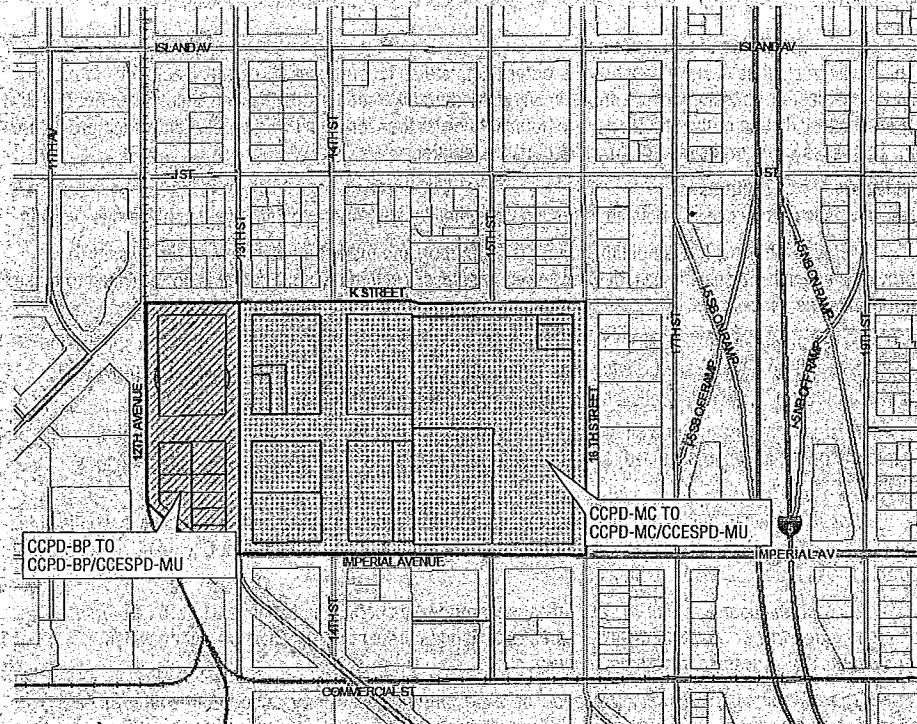


## BALLOT MEASURE (continued)

### EXHIBIT B

#### AMENDMENT TO THE ZONING MAP OF THE CITY OF SAN DIEGO

The City of San Diego Zoning Map is amended by this Initiative as shown on the map below (the real property is located within the bold black outline for ease of reference). As amended by this Initiative, the eastern portions of the real property are located in the CCPD-MC / CCESPD-MU zone and the western portions of the real property are located in the CCPD-BP / CCESPD-MU zone.



### EXHIBIT C

#### San Diego Municipal Code

#### Chapter 6: Public Works and Property, Public Improvement and Assessment Proceedings

#### Article 1: Public Improvement and Assessment Proceedings

#### Division 25: San Diego Tourism Marketing District Procedural Ordinance

#### §61.2501 Purpose and Intent

The purpose and intent of this Division is:

- (a) To allow for the establishment of a *tourism marketing district* to provide for tourism development, including coordinated joint marketing and promotion of San Diego *businesses*, in order to retain and expand the lodging industry which is one of the top revenue generators for the San Diego economy and a key employment sector.
- (b) To create a mechanism to fund promotional *activities* for tourism development through the levy of *assessments* upon the *businesses* to which the special and specific benefit from those *activities* is conferred.
- (c) To provide a method for the involvement of a nonprofit entity to participate in the preparation and review of proposed *tourism marketing district* plans for *district activities*.

## BALLOT MEASURE (continued)

- (d) To provide a method for the City Council to authorize a nonprofit entity with specific interest in the promotion of City tourism to implement and administer *district activities*.
- (e) To provide a mechanism with which a charge may be imposed for a special and specific benefit conferred directly to the payors that is not provided to those not charged and which does not exceed the reasonable costs to the City of San Diego of conferring the benefit.

### **§61.2502 Citation of Division**

This division may be cited as the San Diego Tourism Marketing District Procedural Ordinance.

### **§61.2503 Rules of Construction**

This Division shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality and no neglect or omission of any officer, in any procedure taken under this Division which does not directly affect the jurisdiction of the San Diego City Council to order the work shall void or invalidate such procedure for any *assessment* or the cost of the work done thereunder.

### **§61.2504 Definitions**

For purposes of this division, defined terms appear in italics. The following definitions apply in this Division:

*"Activities"* means, but is not limited to, the promotion and marketing of *assessed businesses* to provide a special and specific benefit to assessed *businesses* within the district that is not provided to those not paying the *assessment*.

*"Assessment"* means a levy for the purpose of conducting *activities* which will provide a special and specific benefit to the assessed *businesses* located within a *tourism marketing district* is not provided to those not paying the *assessment*. *Assessments* levied under this Division are not special taxes.

*"Business"* means any and all types of hotels where a structure, or any portion of a structure, is held out to the public as being occupied, or designed for occupancy, by transients for dwelling, lodging or sleeping purposes.

*"Business owner"* means the owner, operator, or authorized representative of the business who is noted on City records as the responsible party for the remitting and reporting of Transient Occupancy Tax pursuant to San Diego Municipal Code section 35.0114.

*"District management plan"* or *"plan"* means a proposal as defined in sections 61.2507. *"Tourism marketing district,"* or *"district,"* means an area established pursuant to this Division, within which *businesses* pay *assessments* to fund *activities*.

*"Tourism marketing district association"* or *"association"* means a private nonprofit entity which represents, and whose membership includes only the assessed *business owners* or *business owners'* representatives in a *district* and which participates in the preparation and review of proposed *district management plans* for *district activities* that provide a special and specific benefit to *assessed businesses* that is not provided to those that are not assessed. A *tourism marketing district association* may be an existing nonprofit entity or a newly formed nonprofit entity. In accordance with California Streets and Highways Code section 36614.5, the *association* is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose.

*Transient* has the same meaning as in San Diego Municipal Code section 35.0102.

### **§61.2505 Alternative Financing Method; No Limit on Other Provisions of Law**

This Division provides an alternative method of financing certain *activities*. The provisions of this Division shall not affect or limit any other provisions of law authorizing or providing for *activities* or the raising of revenue for the benefit of *businesses*.

### **§61.2506 Establishment of Tourism Marketing District**

A *tourism marketing district* may be established as provided in this Division, in the following manner:

- (a) Upon the submission of a written petition, signed by the *business owners* in the proposed *district* who will pay more than 50 percent of the *assessments* proposed to be levied, the City Council will initiate proceedings to establish a *district* by the adoption of a resolution expressing its intention to establish a *district*. Where the same *business owner* would

## BALLOT MEASURE (continued)

be assessed an amount in excess of 40 percent of the total amount of all *assessments* proposed to be levied, that *business owner's* share of the *assessment* over such 40 percent shall not be included in determining whether the petition is signed by *business owners* who will pay more than 50 percent of the total amount of *assessments* proposed to be levied.

- (b) The petition of *business owners* required under subdivision (a) shall include a summary of the *district management plan*. That summary shall include all of the following:
  - (1) A map showing the boundaries of the *district*.
  - (2) Information specifying where the complete *district management plan* can be obtained.
  - (3) Information specifying that the complete *district management plan* shall be furnished upon request.
- (c) The resolution of intention described in subdivision (a) shall contain all of the following:
  - (1) A brief description of the proposed *activities*, the amount of the proposed *assessment*, a statement that bonds will not be issued, and a description of the exterior boundaries of the proposed *district*. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the *activities* and the location and extent of the proposed *district*.
  - (2) A time and place for a public hearing on the establishment of the *tourism marketing district* and the levying of *assessments*, which shall be consistent with the requirements of section 61.2508.

### **§61.2507 Tourism Marketing District Management Plan**

The *district management plan* shall contain all of the following:

- (a) A map of the *district*.
- (b) The name of the proposed *district*.
- (c) A description of the boundaries of the *district*, including the boundaries of any benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected lands and *businesses* included. Nothing in this Division prohibits the boundaries of a *district* created pursuant to this Division to overlap with other *districts* created pursuant to this Division or assessment districts established pursuant to other provisions of law including, but not limited to, the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code sections 36500 - 36551, or the Property and Business Improvement District Law of 1994, California Streets and Highways Code sections 36600 - 36671.
- (d) The general description of *activities* proposed for each year of operation of the *district* and the estimated maximum cost thereof.
- (e) The estimated total annual amount proposed to be expended each year for administration and operation of the *district*.
- (f) The proposed source or sources of financing including the proposed method and basis of levying the *assessment* in sufficient detail to allow each *business owner* to calculate the amount of the *assessment* to be levied against their *business*.
- (g) The planned frequency for the levying of the *assessments*.
- (h) The specific number of years in which *assessments* will be levied. The maximum term for any *district* is 40 years. The *district management plan* may set forth specific changes in *assessments* for each year of operation of the *district*.
- (i) The proposed timing and duration of *activities* under the *plan*.
- (j) Any proposed rules and regulations to be applicable to the *district*.

## BALLOT MEASURE (continued)

- (k) A list of the *businesses* to be assessed then in existence.
- (l) A description of the procedures utilized by the *association* for the nomination and election of the *association's* board of directors.
- (m) Any other item or matter required to be incorporated therein by the San Diego City Council, the San Diego Municipal Code, or any other applicable law. The *district management plan* shall be approved by City Council at the time City Council considers the petition of *businesses* seeking to establish a *tourism marketing district*. Should the *businesses* or the *tourism marketing district* association seek to modify the *plan* at any time, such modifications shall be subject to the requirements of sections 61.2519 and 61.2520.

### §61.2508 Notice of Proposed Assessments; Public Hearing

- (a) If the City Council proposes to levy a new or increased *assessment* pursuant to this Division, the City shall comply with the following notice, protest, and hearing procedures:
  - (1) The City Council shall identify all *businesses* which will have a special and specific benefit conferred on them by the *activities* and upon which an *assessment* will be imposed.
  - (2) All *assessments* shall be supported by the *management plan*.
  - (3) The City shall give notice by mail to the *business owner* of each identified *business*. Each notice shall state the estimated total initial annual *assessments* for the entire *district*, the duration of the payments, the reason for the *assessment* and the basis upon which the amount of the proposed *assessment* was calculated, and a specific formula in sufficient detail to allow the *business owner* to calculate the proposed assessment on the *business*, together with the date, time, and location of a public hearing on the proposed *assessment*.
  - (4) If the proposed *assessment* formula is based on gross room revenue, the amount of the proposed *assessment* for each identified *business* shall be estimated based on gross room rental revenue for the City's most recent complete fiscal year.
  - (5) Each notice shall also include, in a conspicuous place, a summary of the procedures for the completion, return, and tabulation of the ballots required pursuant to section 61.2508(a)(6), including a statement that the *assessment* shall not be imposed if the ballots submitted in opposition to the *assessment* exceed the ballots submitted in favor of the assessment, with ballots weighted according to the proportional financial obligation of the affected *business*. The City shall give notice by mail at least 45 days prior to the date of the public hearing upon the proposed *assessment*. On the face of the envelope mailed to the *business owner*, in which the notice and ballot are enclosed, there shall appear in substantially the following form in no smaller than 16-point bold type: "OFFICIAL BALLOT ENCLOSED." The City may additionally place the phrase "OFFICIAL BALLOT ENCLOSED" on the face of the envelope mailed to the *business owner*, in which the notice and ballot are enclosed, in a language or languages other than English.
  - (6) Each notice given pursuant to this section shall contain a ballot that includes the City's address for receipt of the ballot and a place where the person returning the assessment ballot may indicate his or her name, a reasonable identification of the *business*, and his or her support or opposition to the proposed *assessment*. Each ballot shall be in a form that conceals its contents once it is sealed by the person submitting the ballot. Each ballot shall be signed and either mailed or otherwise delivered to the address indicated on the ballot. Regardless of the method of delivery, all ballots shall be received at the address indicated, or the site of the public testimony, in order to be included in the tabulation of a majority protest pursuant to section 61.2508(a)(8). Ballots shall remain sealed until the tabulation of ballots pursuant to section 61.2508(a)(8) commences, provided that a ballot may be

## BALLOT MEASURE (continued)

submitted, changed, or withdrawn by the person who submitted the ballot prior to the conclusion of the public testimony on the proposed *assessment* at the hearing required pursuant to this section. The City may provide an envelope for the return of the ballot, provided that if the return envelope is opened by the City prior to the tabulation of ballots pursuant to section 61.2508(a)(8), the enclosed ballot shall remain sealed as provided in this section.

- (7) At the time, date, and place stated in the notice mailed pursuant to section 61.2508(a)(3), the City shall conduct a public hearing upon the proposed *assessment*. At the public hearing, the City shall consider all objections or protests, if any, to the proposed *assessment*. At the public hearing, any person shall be permitted to present written or oral testimony. The public hearing may be continued from time to time.
  - (8) At the conclusion of the public hearing, a person or persons designated by the City shall tabulate the ballots submitted, and not withdrawn, in support of or opposition to the proposed *assessment*.
  - (9) The City Council may, if necessary, continue the tabulation at a different time or location accessible to the public, provided the City Council announces the time and location at the hearing. Technological methods may be used in the tabulation of the ballots, including, but not limited to, punchcard, or optically readable (bar-coded) ballots.
  - (10) A majority protest exists if the ballots submitted, and not withdrawn, in opposition to the proposed *assessment* exceed the ballots submitted, and not withdrawn, in its favor, weighting those ballots by the amount of the proposed *assessment* to be imposed upon the identified *business* for which each ballot was submitted.
  - (11) If there is a majority protest against the imposition of a new *assessment* or an increase in an existing *assessment*, the City shall not impose or increase the assessment.
- (b) In addition to the requirements of section 61.2508(a), the City shall also comply with California Government Code section 54954.6, as it relates to adopting any new or increased assessment.

### §61.2509 City Council Adoption, Revision or Modification of Assessments; Modification of Approved Activities; Changes to District Boundaries

At the conclusion of the public hearing to establish the *district*, the City Council may adopt, revise, change, reduce or modify the proposed *assessment* or the type or types of *activities* to be funded with the revenues from the *assessments*. At the hearing, the City Council may only make changes to the boundaries of the proposed *tourism marketing district* that will exclude territory containing *businesses* that the City Council finds will not benefit from the proposed *activities*; and may only change proposed *assessments* by reducing them.

### §61.2510 Resolution of Formation of Tourism Marketing District

- (a) If the City Council, following a public hearing, decides to establish a proposed *tourism marketing district*, the City Council shall adopt a resolution of formation that shall contain all of the following:
  - (1) A brief description of the proposed *activities*, the amount of the proposed *assessment*, and a description of the exterior boundaries of the proposed *district*. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the *activities* and the location and extent of the proposed *district*.
  - (2) The number, date of adoption, and title of the resolution of intention.
  - (3) The time and place where the public hearing was held concerning the establishment of the *district*.

### BALLOT MEASURE (continued)

- (4) A determination regarding any protests received. The City Council shall not establish the *district* or levy *assessments* if a majority protest was received.
  - (5) A statement that the operations of the *district* established by the resolution shall be subject to any amendments to this Division.
  - (6) A statement that the activities to be provided to benefit *businesses* in the *district* will be funded by the levy of the *assessments*. The revenue from the levy of *assessments* within a *district* shall not be used to provide *activities* that directly benefit *businesses* outside the *district* or for any purpose other than the purposes specified in the resolution of intention, as modified by the City Council at the hearing concerning establishment of the *district*.
  - (7) A statement specifying the time and manner for levying the assessments by the City Treasurer.
  - (8) A statement that any *assessment* imposed pursuant to this Division is levied solely upon the *business owner* within the *district*, that the *business owner* is solely responsible for payment of the *assessment* when due, and that, if the *business owner* chooses to collect any portion of the *assessment* from a *transient*, that portion shall be specifically called out and identified for the *transient* in any and all communications from the *business owner* as a "San Diego Tourism Marketing District Assessment."
  - (9) A finding that the *activities* funded by the *assessments* will provide a special and specific benefit to *businesses* within the *tourism marketing district* that is not provided to those not paying the *assessment*.
- (b) The adoption of the resolution of formation and recordation of the notice and map pursuant to section 61.2512 shall constitute the levy of an *assessment* in each of the fiscal years referred to in the *district management plan*.

#### **§61.2511 City Clerk to Record Notice and Map of District**

Following adoption of a resolution establishing a *district* pursuant to section 61.2510 the City Clerk shall record a notice and map of the *district*.

#### **§61.2512 City Council Establishment of Benefit Zones**

The City Council may establish one or more separate benefit zones within the *district* based upon the degree of benefit derived from the *activities* to be provided within the benefit zone, and may impose a different *assessment* within each benefit zone. The City Council may also define categories of *businesses* based upon the degree of benefit that each will derive from the *activities* to be provided within the *district*, and may impose a different *assessment* or rate of *assessment* on each category of *business*, or on each category of *business* within each zone.

#### **§61.2513 Establishment, Modification or Disestablishment; Districts and Benefit Zones**

All provisions of this Division applicable to the establishment, modification, or disestablishment of a *tourism marketing district* apply to the establishment, modification, or disestablishment of benefit zones or categories of *business*. In order to establish, modify, or disestablish a benefit zone or category of *business*, the City Council shall follow the procedure to establish, modify, or disestablish a *tourism marketing district*.

#### **§61.2514 Expiration of Tourism Marketing District**

If a *tourism marketing district* expires due to the time limit set pursuant to section 61.2507(h), a new *district management plan* may be created and a new *district* established pursuant to this Division.

#### **§61.2515 Collection of Assessments**

The collection of the *assessments* levied pursuant to this Division shall be made at the time and in the manner set forth by the City Council in the resolution establishing the *district* described in section 61.2510. A method for charging interest and penalties for delinquent payments of *assessments* may also be prescribed in the resolution establishing the *district*.

## BALLOT MEASURE (continued)

### §61.2516 Exemptions from Assessments

The following *business* revenues are considered exempt from assessment under this Division:

- (1) Revenues from a *transient* who has exercised occupancy for more than one month;
- (2) Revenues from a *transient* whose room rent is being paid directly or indirectly by the federal government or the State of California, or
- (3) Revenues from a *transient* who is by treaty exempt from locally-levied transient occupancy taxes.

### §61.2517 Validity of Assessments; Contests

The validity of an *assessment* levied under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution establishing the *district* and levying the *assessment* is adopted pursuant to section 61.2510. Any appeal from a final judgment in an action or proceeding shall be perfected by the appellant within 30 days after the entry of judgment.

### §61.2518 City's Promotional Responsibilities

- (a) Nothing in this Division shall relieve the City of its responsibility to promote the City of San Diego as enumerated in San Diego Municipal Code section 35.0128 regarding the use of revenues from the City's Transient Occupancy Tax.
- (b) The City Manager, or the Manager's designee, will provide the *tourism marketing district association*, on an annual basis, a statement detailing actual Transient Occupancy Tax revenues collected under San Diego Municipal Code section 35.0103 that are available for promoting the City. This statement shall also describe the prescribed use of revenues from the City's Transient Occupancy Tax to include, but not be limited to:
  - (1) The annual debt payment for all existing bond obligations related to the San Diego Convention Center Corporation;
  - (2) The annual marketing subsidy as required by the San Diego Convention Center Corporation; and
  - (3) The annual debt payment for all existing bond obligations relative to Balboa Park and Mission Bay Park.

### §61.2519 Modifications of District Management Plan

A *tourism marketing district association* may, at any time, request that the City Council modify its *district management plan*. Any modification of the *district management plan* shall be made pursuant to this Division.

### §61.2520 District Plan Modification; Public Hearing Required

- (a) Upon the written request of a *tourism marketing district association*, the City Council may modify the *district management plan*, including modification of the *activities* to be funded with the revenue derived from the levy of the *assessments*, after conducting one public hearing on the proposed modifications. If the modification includes the levy of a new or increased *assessment*, the City shall comply with the notice and protest requirements of section 61.2508.
- (b) The City Council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.
- (c) The City shall give all *business owners* within the *district* written notice by mail, of the proposed modifications of the *district management plan*, an explanation of the modification, and the reason for the modification, together with the date, time and location of a public hearing on the proposed modification.

### §61.2521 Tourism Marketing District Association; Report of Activities

- (a) Each *tourism marketing district association* shall cause to be prepared a prospective report for each fiscal year, except the first year, for which *assessments* are to be levied and



## BALLOT MEASURE (continued)

collected to pay the costs of the *activities* described in the report. The *tourism marketing district association's* first report shall be due after the first year of operation of the *district*. The report may propose changes, including, but not limited to, the boundaries of the *tourism marketing district* or any benefit zones within the *district*, the basis and method of levying the *assessments*, and any changes in the classification of categories of *business*, if a classification is used.

- (b) The report shall be filed with the City Clerk prior to the end of each fiscal year, and shall refer to the *tourism marketing district* by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:
  - (1) Any proposed changes to the boundaries of the *tourism marketing district* or to any benefit zones or classification of *businesses* within the *district*.
  - (2) The *activities* to be provided for that fiscal year.
  - (3) An estimate of the cost of providing the *activities* for that fiscal year.
  - (4) The method and basis of levying the *assessment* in sufficient detail to allow each *business owner* to estimate the amount of the *assessment* to be levied against his or her *business* for that fiscal year.
  - (5) The estimated amount of any surplus or deficit revenues to be carried over from the previous fiscal year.
  - (6) The estimated amount of any contributions to be made from sources other than *assessments* levied pursuant to this Division.
- (c) The City Council may approve the report as filed by the *tourism marketing district association*, or may modify any portion of the report and approve it as modified. Such modification shall only be made subject to the noticing provisions of sections 61.2520. Any portion of the report which proposes to modify the *district management plan* shall only be approved after complying with the notice and public hearing requirements of Section 61.2520. The City Council shall not approve a change in the basis and method of levying *assessments* that would impair an authorized or executed contract to be paid from the revenues derived from the levy of *assessments*.
- (d) A *tourism marketing district association* shall comply with the Ralph M. Brown Act, California Government Code sections 54950 - 54963, at all times when matters within the subject matter of the *district* are heard, discussed, or deliberated, and with the California Public Records Act, California Government Code sections 6250 - 6276.48, for all documents relating to *activities* of the *district*.
- (e) Each *business owner* paying the *tourism district assessment* has the right to vote in annual elections of the *association* and the right to seek nomination or election to the board of directors of the *association*.

### §61.2522 Tourism Marketing District Association; Contract With Nonprofit

The *district management plan* may state that a *tourism marketing district association* will provide for and administer the *activities* described in the *district management plan*. If the *district management plan* designates a *tourism marketing district association*, the City may contract with the designated nonprofit corporation to implement the *plan* and carry out specified *activities*, subject to the terms and conditions enumerated in the contract.

### §61.2523 Renewal of Expired District

- (a) Upon renewal of an expired *district*, any remaining revenues derived from the levy of *assessments*, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed *district*. If the renewed *district* includes additional *businesses* not included in the prior *district*, the remaining revenues shall be spent to benefit only the *businesses* in the prior *district*. If the renewed *district* does not include

## BALLOT MEASURE (continued)

*businesses* included in the prior *district*, the remaining revenues attributable to these *businesses* shall be refunded to the owners of these *businesses*.

- (b) Upon renewal, a *district* shall have a term not to exceed forty (40) years. There is no requirement that the boundaries, *assessments*, or *activities* of a renewed *district* be the same as the original or prior *district*.

### §61.2524 Disestablishment of District; Procedures

- (a) Any *tourism marketing district* established or extended pursuant to the provisions of this Division, where there is no outstanding and unpaid indebtedness incurred to accomplish any of the purposes of the *district*, may be disestablished by resolution of the City Council in either of the following circumstances:
- (1) If the City Council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the *district*, or
  - (2) After the first year of operation of the *district*, there shall be a 30-day period each year in which assessed *business owners* may request disestablishment of the *district*. The first such period shall begin upon presentation to City Council of the *district's* initial annual report of activities. During each successive year of operation of the *district*, *business owners* shall have such a 30-day period to request disestablishment upon presentation of the *district's* report of activities. Upon the written petition of the *business owners* in the *district* who pay 50 percent or more of the *assessments* levied, the City Council shall pass a resolution of intention to disestablish the *district*. The City Council shall notice a hearing on disestablishment, pursuant to section 61.2508.
- (b) The City Council shall adopt a resolution of intention to disestablish the *district* prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the *assessments* levied within the *district*. The notice of the hearing on disestablishment required by this section shall be given by mail to the owner of each *business* subject to *assessment* in the *district*. The City Council shall conduct the public hearing not less than 30 days after the mailing of the notice to the *business owners*. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

### §61.2525 Disestablishment; Refund of Assessments

- (a) If the disestablishment occurs before an *assessment* is levied for the fiscal year, the method and basis that was used to calculate the *assessments* levied in the immediate prior fiscal year shall be used to calculate the amount of any refund. All outstanding *assessment* revenue collected after disestablishment shall be spent on *activities* specified in the *district management plan*.
- (b) Upon the disestablishment of a *district*, any remaining revenues, after all outstanding debts are paid, derived from the levy of *assessments*, or derived from the sale of assets acquired with the revenues, shall be refunded to the *business owners* then located and operating within the *district* in which *assessments* were levied by applying the same method and basis that was used to calculate the *assessments* levied in the fiscal year in which the *district* is disestablished.

### §61.2526 Action to Determine Validity; Action Contesting Validity

- (a) An action to determine the validity of *assessments*, contracts, improvements, or *activities* may be brought by the City or *tourism marketing district association* pursuant to Chapter 9 (commencing with section 860) of Title 10 of Part 2 of the California Code of Civil Procedure. For such purpose an *assessment*, *activity*, improvement, or acquisition shall be deemed to be in existence upon its authorization by City Council.

**BALLOT MEASURE (continued)**

- (b) In accordance with California Streets and Highways Code section 36633, the validity of an *assessment* levied under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the *assessment* is adopted pursuant to section 61.251. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

**STATEMENT OF REASONS**

A statement of the reasons for the proposed action as contemplated in said petition is as follows:

This Initiative adopts the legislative policy of the City to provide for the financing, development and operation of the Convention Center Expansion and Stadium Project and expanded tourism and conventions in the City and, thereby, provide economic development opportunities, including creating jobs, increasing tourism, and other economic activity in the City. The Initiative provides for the development of an integrated Convention Center Expansion and Stadium that expands the City's ability to host a wider range of convention, civic, sports, and entertainment events, including professional football; authorizes an increase in the Transient Occupancy Tax, paid by hotel/motel guests, to be deposited in special City trust funds to be used for the development and financing of the Convention Center Expansion and Stadium and the development and implementation of a tourism and convention center marketing program; requires a private sector contribution of \$650,000,000 be provided for the Stadium and that a covenant and agreement be secured requiring a professional football team leasing the Stadium to agree not to relocate for a period of 30 years; provides for a one-time contribution of \$350,000,000 from Transient Occupancy Tax revenues to pay for allocated Stadium costs attributable to the Convention Center Expansion/Stadium integration and joint use features; prohibits the City from paying for the construction of the Stadium or any cost overruns from the Stadium construction; establishes an alternative land use plan allowing for the development a Convention Center Expansion and Stadium Planned District in the East Village area of Downtown; and authorizes the City Council, pursuant to a set of guiding legislative policies, to take any and all actions to permit the development and financing of the Convention Center Expansion and Stadium Project.

Date: March 30, 2016

/s/

John "JT" Thomson  
5060 Westminster Terrace  
San Diego, CA 92116

SAMPLE BALLOT & VOTER INFORMATION

# Presidential General Election

Tuesday, November 8, 2016

Polls open 7am » close 8pm



# SUPPLEMENTAL

Important Election  
Information  
Measures C & D



Scan to check the status  
of your registration, polling  
place and mail ballot



City of San Diego

## **VOTING PROVISIONALLY. WHAT IS IT? ONLY USE IT AS A LAST RESORT.**

As a registered voter in San Diego County, provisional voting protects your ability to vote. If you can't make it to your poll, you forget to bring your mail ballot to the poll, or your name is not on the voter list, it is your right to receive a provisional ballot. But be prepared to spend some time filling out the form on the provisional envelope. Also, if you vote provisionally outside your assigned voting precinct, you may not be voting on all the contests you are eligible to vote on. Here's how to avoid unnecessary provisional voting on Election Day:

**Go to your ASSIGNED polling place:** Look up your assigned poll at [sdvote.com](http://sdvote.com).

**Surrender Your Mail Ballot:** If you decide to vote at your ASSIGNED polling place instead of by mail, you should BRING your mail ballot with you to the polls to be SURRENDERED.

**Vote and Return Your Mail Ballot:** Mail promptly, or deposit your completed mail ballot at a drop-off location PRIOR to Election Day. See drop-off locations in your packet or online: [sdvote.com](http://sdvote.com).

### **About this SUPPLEMENTAL Pamphlet**

All registered voters within the City of San Diego are receiving this SUPPLEMENTAL pamphlet as an addition to the standard Sample Ballot & Voter Information pamphlet for the November 8, 2016 Presidential General Election. This supplement contains the full text of Measures C & D; and includes their Ballot Question, Official Title and Summary, Impartial Analysis, Fiscal Impact Statement, Argument In Favor, and Argument Against. You may also view the full text of these measures online at [www.sdvote.com](http://www.sdvote.com).

This supplemental pamphlet was printed and mailed separately to ensure you receive timely information related to the election.

★ ★ ★ ★ ★ VOTE 2016 ★ ★ ★ ★ ★

# CITY OF SAN DIEGO

(This Measure will appear on the ballot in the following form.)

## MEASURE D

**FACILITIES AND TOURISM TAX INITIATIVE.** Should the measure be adopted to: among other provisions, increase San Diego's hotel occupancy tax up to 5%; end Tourism Marketing District; allow hoteliers to create assessment districts and use hotel occupancy taxes for downtown convention center and not a stadium; prohibit contiguous expansion of existing convention center; create downtown overlay zone for convention and sports facilities; create environmental processes; and allow Qualcomm stadium property's sale for educational and park uses?

This measure's approval threshold could be affected by legal issues currently before the California Supreme Court.

### OFFICIAL TITLE AND SUMMARY

#### BALLOT TITLE

Tax and Facilities Initiative: Zoning for Downtown Convention and Sports Facilities; Transient Occupancy Tax Increase for Tourism Marketing, Convention Facilities, and General Uses; Authorizing Sale of Mission Valley Stadium Property for University Facilities and Parks

#### BALLOT SUMMARY

This measure would amend the San Diego Municipal Code to, among other things, increase the transient occupancy tax by up to 5%, and allow hoteliers to retain most of the increase as reimbursement for assessments they make to newly formed assessment districts. Assessment districts would be formed by hoteliers for development of a convention center that is not contiguous with the existing convention center in downtown San Diego, and that may be combined with a sports facility. Assessment districts could also be formed for tourism marketing.

The development area for the future convention center and sports facilities would be defined by a new overlay zone with specific development policies. Projects allowed by the new overlay zone would be subject to different environmental processes and requirements in place of state laws.

The measure would also authorize the sale of 166 acres of City-owned property in Mission Valley to one or more local colleges or universities or the San Diego River Conservancy, with certain conditions for sale and use of the property.

The tax increase provisions can be summarized as follows: If adopted, this measure would increase the City's transient occupancy tax rate by 5% for hotels with more than 30 rooms, and for recreational vehicle parks and campgrounds, for a total tax rate of 15.5%, and by 3.5% for hotels with less than 30 rooms, for a total tax rate of 14%. These increased rates would be in effect until changed by voters.

## BALLOT SUMMARY (CONTINUED)

If any of the municipal code amendments included in the measure are invalidated by a court, then the measure provides that all of the measure's provisions would be invalid. If this happens, the tax increase likely also would be invalidated and would terminate.

This measure was placed on the ballot by the City Council after voter signatures qualified the initiative measure for the ballot.

## CITY ATTORNEY'S IMPARTIAL ANALYSIS

This measure would amend the San Diego Municipal Code to:

- Add zoning for development of a convention center, sports facilities, or combined facilities (Overlay Zone) for a twelve-block area east of Petco Park.
- Authorize creation of new improvement districts to fund a convention center, tourist-serving transportation infrastructure, and maintenance and repair of tourist facilities in the Overlay Zone. These districts would be formed by hoteliers, funded through assessments, and subject to laws regulating assessment districts. Assessments could not be used for a sports facility or on-site expansion of the existing convention center, and the City would be prohibited from funding any projects for convention center, sports, or combined facilities in the Overlay Zone.
- Eliminate the existing Tourism Marketing District and end its assessments. This District currently promotes the City to visitors, funded through assessments of up to 2% of hotel room rates.
- Increase the City's Transient Occupancy Tax (TOT). This tax is paid by guests at hotels, recreational vehicle parks and campgrounds. The tax is itemized on guests' bills, collected from guests by the operator and turned over to the City. The current tax is 10.5%. This measure would increase TOT to 15.5% for larger hotels, recreational vehicle parks and campgrounds, and to 14% for smaller hotels.
- Instead of depositing with the City all TOT revenue collected from guests, this measure would allow hoteliers to keep revenues from up to 2% of the TOT rate as reimbursement for assessments they paid to a newly formed assessment district covering development of a downtown convention center, and up to 2% as reimbursement for assessments paid to a newly formed assessment district for tourism marketing.
- Repeal the existing requirement for spending revenue from 4% of the TOT rate on City promotion.
- Authorize the City Auditor to audit collection and reporting of TOT.
- Block the City from participating in any project to develop an on-site expansion of the San Diego Convention Center on Harbor Drive, and its operation, without a public vote; authorize the City to hire the improvement district established by hoteliers to operate the existing convention center and handle tourism marketing.
- Authorize the sale of the 166-acre Qualcomm stadium site in Mission Valley to one or more local colleges or universities or the San Diego River Conservancy, with conditions relating to setting aside 28 acres for river restoration and an urban rivers research center, 22 acres for development of public parks, and walking and biking trails.
- Create a local environmental process for convention center and sports facility projects in the Overlay Zone, replacing the California Environmental Quality Act (CEQA). The local environmental law would require specific mitigation measures in addition to the mitigation, monitoring and reporting requirements of CEQA. It would create a new hearing process and broader rights to bring environmental lawsuits.

## CITY ATTORNEY'S IMPARTIAL ANALYSIS (CONTINUED)

This measure provides that if any provision is invalidated by the courts, the entire measure would be invalid, possibly invalidating the tax increase after revenue is collected. The measure does not address potential consequences of invalidating provisions already implemented.

### FISCAL IMPACT STATEMENT

This measure would increase the City's transient occupancy tax (TOT) from 10.5% to 15.5% for hotels with 30 or more rooms, Recreational Vehicle Parks, and Campgrounds. TOT for hotels with less than 30 rooms would increase from 10.5% to 14%. Revenue collected pursuant to these tax increases would be deposited in the City's General Fund and used for general governmental purposes. It is estimated that this TOT increase could generate approximately \$98 million annually beginning in 2017 and increase or decrease thereafter reflecting the growth or decline in the number of visitors to the City.

Additionally, this measure eliminates a 2% assessment that hotels currently charge customers and use to fund a tourism marketing district (TMD). Instead, this measure allows hotels the option to form special assessment districts and retain a portion of collected TOT funds for (a) tourism marketing, and/or (b) a new non-contiguous convention center expansion in the East Village. If hotels retain the maximum amount for both purposes, they would retain up to 4% (\$80 million) annually of TOT that would otherwise be remitted to the City (up to 2% for tourism marketing and 2% for a non-contiguous convention center expansion).

It is uncertain if hotels will elect to participate in these special assessment districts. Depending on how many hotels participate in the special assessment districts and at what level of assessment, the additional TOT revenue initially generated for the City's General Fund could range from \$18 million annually (if all hotels fully participate) to \$98 million annually (if no hotels participate).

If hotels elect to form special assessment districts for tourism marketing and/or a new non-contiguous convention center expansion, it is estimated the City Treasurer would incur administrative costs of approximately \$234,000 in the first year, and at least \$84,000 annually thereafter, to inspect and audit hotel records to ensure proper payment is being made to the City.

The City would recover these expenses from special assessment district funds.

The City is currently required to use 4% of the existing 10.5% TOT solely for programs and services promoting the City. This measure repeals this requirement, making the 4% portion of TOT unrestricted and available for any public purpose or service, including promoting the City.

This measure prohibits construction of a contiguous bay-front convention center expansion without a public vote. The measure also prohibits public funding from being spent on a new stadium without a public vote.

Should the Chargers stop playing at Qualcomm Stadium in Mission Valley, this measure would authorize the City to sell the site to certain educational or environmental non-profit institutions for low-density development, provided the purchaser implements specified property improvements. The specified development and improvement requirements in this measure could reduce the sale value of the Qualcomm site.

San Diego's current effective TOT rate (the combined TOT and TMD) is 12.5%, below the average of other comparable cities. A 15.5% TOT for most hotels would put San Diego among those cities with higher TOT rates, potentially impacting hotel occupancy.



## ARGUMENT IN FAVOR OF MEASURE D

### YES on D: Protect Local Taxpayers & Resources.

Tourists and residents share our beaches, bays, parks, sports and infrastructure, but politicians have let large corporate hotels dictate tourism policy *without a public vote*.

Industry studies show that San Diego's hotel tax rate on tourists is below rates charged by competing cities.

The result: hotel profits soar, while the tourism industry escapes paying its fair share for streets, sidewalks, public safety, and other amenities that serve visitors *and* are important to our quality of life.

The League of Women Voters, the League of Conservation Voters, taxpayer advocates, sports fans, and Aztec alumni all support Yes on D.

### YES on D: Put Local Taxpayers First.

- Set general-fund tax on large hotels at 15.5% – some cities charge tourists more: Anaheim, 17%; San Francisco, 16.25%; Los Angeles, 15.5%.
- End taxpayer-funded hotel marketing giveaways.

### YES on D: Protect Local Resources.

#### Mission Valley?

- **YES** to River Park, transit-dependent university uses, sports, and public access.
- **Stop** massive 6,000-unit condo plan and gridlock.

#### San Diego's Bayfront?

- **YES** to protect tourist *and* resident access to Bay.
- **Stop** walling off the Bay without a public vote.

#### Chargers Stadium?

- **YES** to limit City to shared land and infrastructure.
- **Stop** taxpayer funds for stadium/arena.

#### Convention Center Expansion?

- **YES** to return on investment *and* cap on spending.
- **Stop** blank checks and "pie-in-the-sky" promises.

#### Tourism Marketing?

- **YES** to proper oversight *and* cap on City spending.
- **Stop** blank checks for large hotels.

### Large Hotels and the Chargers Must Pay Their Own Way

Vote **YES on D** <http://citizensplan.org>

*Protect Local Taxpayers. Protect Local Resources.*

DONNA FRYE  
Small Business owner/  
Former City Councilmember

DAVID ALVAREZ  
City Councilmember/  
SDSU alumnus

SCOTT BARNETT  
President, Taxpayers Advocate.org

MARTY BLOCK  
State Senator/Chair,  
Budget Subcommittee #1 (Education Finance)

JEFF MARSTON  
Past President, SDSU Alumni Association

## ARGUMENT AGAINST MEASURE D

Vote **NO** on Measure D

### Measure D Could Affect Comic-Con Remaining in San Diego

"Comic-Con has stated in the past, and continues to believe, a contiguous, expanded convention center is one that will benefit the city best. It appears this ballot initiative does not favor that scenario." - Comic-Con

In fact, Measure D specifically prohibits the contiguous expansion of the Convention Center.

### Measure D Raises Taxes

Measure D will raise TOT taxes to 15.5% and will eliminate the Tourism Marketing District that promotes San Diego and brings in tourists from around the world. Measure D will seriously impact San Diego's tourist economy and the nearly 200,000 jobs that depend on it.

### Measure D Crafted Behind Closed Doors by Special Interests

This complicated and convoluted initiative was crafted in secret by special interests, a few self-serving hoteliers, and downtown insiders. Measure D would allow unelected special interests to collect and spend your taxes.

### Legal Flaws in Measure D Puts Taxpayers at Risk

Legal experts have expressed serious reservations regarding Measure D. City Attorney's office released a comprehensive legal analysis that identified a series of legal risks to the City. The poorly written measure contains an unusual "poison pill" provision that will create financial risk for the City. **Legal challenges would take years and cost taxpayers millions.** Read analysis at [www.sandiego.gov/cityattorney](http://www.sandiego.gov/cityattorney)

### Measure D is Likely Unconstitutional

According to the California Constitution, an *initiative must be limited to a single subject*. Measure D, however, asks voters to approve over 20 unique provisions including: tax hikes, creating new land use zones, creates new bureaucratic environmental laws to replace the California Environmental Quality Act, authorizes the sale of Qualcomm stadium site, and requires the Port of San Diego to spend millions of taxpayer dollars on an ill-advised scheme.

Vote **NO** on Measure D!

**RHIANA WILSON**  
Keep Comic-Con in San Diego, Founder

**C. TERRY BROWN**  
Lodging Industry Association, Chairman

**GREG STEIN**  
San Diego County Taxpayers  
Association, Chairman

**SCOTT SHERMAN**  
San Diego City Councilmember,  
District 7

**BALLOT MEASURE FULL TEXT**  
**NOTICE OF INTENT TO CIRCULATE PETITION**

Notice is hereby given of the intention of the person whose name appears hereon to circulate a petition within the City of San Diego for the purpose of requiring the responsible management of the City's major tourism and entertainment-related facilities and infrastructure benefitting from and impacting the City's most valuable resource: the connection of tourists and residents to the Pacific Ocean and its beaches, bays, rivers and tributaries.

**THE CITIZENS' PLAN FOR THE RESPONSIBLE MANAGEMENT OF  
MAJOR TOURISM AND ENTERTAINMENT RESOURCES**

Be it ordained by the People of the City of San Diego:

**Part 1. Title.**

This Ordinance shall be known and may be cited as the Citizens' Plan for the Responsible Management of Major Tourism and Entertainment Resources (the "Ordinance").

**Part 2. Findings and Declarations.**

The People of the City of San Diego hereby find and declare all of the following:

- (a) The City of San Diego's most valuable resource for both tourists and residents is the City's connection to the Pacific Ocean and its beaches, bays, harbors, rivers and tributaries, which are supported by major tourism- and entertainment-related facilities and infrastructure that benefit from and impact this resource. This Ordinance is necessary to ensure that the benefits of this resource can be accessed and enjoyed by tourists and residents alike in the near and distant future, and to establish transparent financing mechanisms that support each of them paying their fair share for the facilities and infrastructure that benefit from and impact this resource.
- (b) The public's right to vote - especially on the City's levying of new taxes, incurring of new debt, and selling and administering of large parcels of public land - is a basic legal requirement embodied in the California Constitution and the San Diego City Charter, and must not be violated under any circumstance.
- (c) Tourism is one of the City's top industries and is responsible for a substantial portion of the City's revenues in the form of the Transient Occupancy Tax ("TOT"), which is used to pay for a variety of general governmental services such as street and sidewalk maintenance, parks, fire stations, environmental protection, and public safety that benefit tourists and residents alike. The San Diego Municipal Code currently sets the TOT rate at 10.5%.
- (d) The City's 10.5% TOT rate is not competitive. By comparison, it has been reported that in 2014 Seattle's lodging tax rate was 16.5%, San Francisco's lodging tax rate was 16.25%, Los Angeles' lodging tax rate was 15.5%, and Anaheim's lodging tax rate was 17%. The City therefore could eliminate the 0.55-2% "self-assessment" that currently may be passed on to hotel guests in connection with the San Diego Tourism Marketing District and raise its overall TOT rate to 15.5%, thereby increasing the amount of money paid by tourists in support of their fair share of general governmental services, while still maintaining a highly competitive tax rate. Moreover, by having a slightly lower rate for tourists who stay at smaller accommodations, the City will also have an even greater competitive advantage while also having needed general revenues to support general governmental services.
- (e) City officials have done too little to ensure that tourists and the businesses benefitting from tourism pay their fair share of the costs to develop, maintain and enhance existing and new tourism- and entertainment-related facilities and infrastructure in an economically sustainable and environmentally responsible manner. It has been reported that Qualcomm Stadium may require \$75 million or more in deferred maintenance and

## BALLOT MEASURE (continued)

the San Diego Convention Center may require \$30 million to \$40 million in deferred maintenance. There has also been a lack of transparency, accountability, and efficiency in the City's planning, financing, managing, and sales and marketing process for such facilities and infrastructure, which has contributed to many of the City's problems such as funding shortfalls and failed measures to expand the Convention Center. The adoption of this Ordinance would serve in part to ensure that the City's facilities and infrastructure are responsibly managed and would establish concrete, transparent, and voter-approved mechanisms and incentives for the tourism industry to support its fair share of the costs required to properly maintain and enhance existing facilities and infrastructure and to develop new facilities and infrastructure.

- (f) The City's tourism industry has enjoyed many of the benefits of the availability of public resources such as Qualcomm Stadium, the San Diego Convention Center, and the facilities and infrastructure that serve them, without having to bear a commensurate share of the burden of providing and maintaining such infrastructure and facilities. These resources have, for many years, experienced growing operational deficits and deferred-maintenance debts. Only a coordinated and consolidated governance structure can provide the efficiencies necessary to relieve the public of this burden. The adoption of this Ordinance would serve in part to give the hotel industry incentives to assume their fair share of providing the highest quality tourism- and entertainment-related facilities and infrastructure.
- (g) Responsibly managing the City's tourism- and entertainment-related facilities and infrastructure in a manner that preserves and enhances access for tourists and residents to the City's most valuable resource - its unique connection to the Pacific Ocean and its beaches, bays, harbors, rivers and tributaries - requires restoring and protecting this resource, appropriately allocating low-density and high-density development impacting this resource, and supporting compatible uses adjacent to or near this resource that together maximize tourism and public benefits. The adoption of this Ordinance would serve in part to provide voter-approved incentives for meeting the foregoing need, including, but not limited to, incentives to concentrate intensive and high-density development outside of the Qualcomm Stadium site and away from the Downtown San Diego Waterfront.
- (h) The Qualcomm Stadium site and the City's downtown have long been linked, in part because of the ongoing discussion about the location of a potential new home stadium for the San Diego Chargers. This link is as natural as the connection tourists and residents have to the Pacific Ocean and its waterways. The existing Qualcomm Stadium site and the downtown area in and around the "East Village" community are among the few remaining areas within the City that would support the development of future major tourism- and entertainment-related facilities, and would benefit from significant facilities and infrastructure such as existing hotels, public-access, and public-transportation systems. These factors, and others, also provide the necessary tools to prudently finance any future major tourism- and entertainment-related facilities. As such, the adoption of this Ordinance would not prevent the City from pursuing the development of a new home stadium for the Chargers or another National Football League ("NFL") franchise either at the existing Qualcomm Stadium site or in an area of downtown that is off the Downtown San Diego Waterfront. Moreover, in furtherance of its stated objective, and if the Chargers and the City determine not to maintain the existing Qualcomm Stadium site for the home stadium of the Chargers or if another NFL team does not make the site its home stadium, this Ordinance would authorize the City to sell the approximately 166-acre site for its fair-market value and subject to the condition that it be developed for the combined activities and uses of environmental preservation, education, eco-tourism, recreation, and other compatible uses that together maximize the tourism and public benefits of and access to this land with such high ecological value.

## BALLOT MEASURE (continued)

- (i) For all of the foregoing reasons, as well as those expressed in the other provisions of this Ordinance, the reforms contained herein are necessary to properly and adequately enhance, preserve, and manage the City's major tourism- and entertainment-related resources in a manner that best protects the unique and valuable connection between tourists and residents and the Pacific Ocean and its beaches, bays, harbors, rivers and tributaries. To this end, the reforms reflect the public's desire to see substantial improvements in the City's overall management of its tourism- and entertainment-related resources through a comprehensive, integrated, economically sustainable, environmentally responsible, and lawful plan for enhancing, preserving, and responsibly managing all of these resources. All of the components of this Ordinance have a direct relationship and are essential to each other in order to effectuate the public's purposes and intent.

### Part 3. Purposes and Intent.

The People of the City of San Diego hereby declare the following purposes and intent in enacting this Ordinance:

- (a) Setting the City's Transient Occupancy Tax at a competitive rate compared to other cities: 15.5% for large hotels and 14% for small hotels.
- (b) Repealing an existing 4% earmark on Transient Occupancy Tax that is used for promoting the City as a tourism destination, repealing the San Diego Tourism Marketing District Procedural Ordinance and its 0.55-2% surcharge on hotel guests as a redundant program for promoting the City, and replacing them with two voluntary programs that encourage hoteliers to self-assess as follows:
- (1) By creating one self-assessment designed to pay for promoting the City, and another self-assessment designed to finance an off-waterfront expansion of the San Diego Convention Center; and
- (2) By giving hoteliers the option of taking a credit of up to 2% from their Transient Occupancy Tax remittances for their promotional self-assessment and another credit of up to 2% from their remittances for their expansion self-assessment, for a maximum credit of 4%, as an incentive to hoteliers in exchange for their assumption of the responsibility for promoting the City and expanding the Convention Center.
- (c) Reaffirming the prohibition against an expansion of the San Diego Convention Center on the Downtown San Diego Waterfront, allowing an off-waterfront expansion of the Convention Center, and thereafter allowing for, but not requiring, private management of the Convention Center subject to the assumption of liabilities (including deferred maintenance) by such private management as specified below.
- (d) Allowing for, but not requiring, the sale of the approximately 166-acre Qualcomm Stadium site, subject to the site thereafter being used for the compatible low-impact purposes of environmental preservation, university education, eco-tourism, recreation, and other compatible uses that together maximize the tourism and public benefits of and access to land with such high ecological value; and encouraging higher-density development to be directed downtown, consistent with existing facilities and infrastructure and the community plan.
- (e) Allowing for retention of the San Diego Chargers in Mission Valley or downtown without taxpayer funding, consistent with the protection of the Pacific Ocean and its beaches, bays, harbors, rivers and tributaries, as applicable, with public financing requiring a separate vote of the people.

## BALLOT MEASURE (continued)

Part 4. The Citizens' Plan for the Responsible Management of Major Tourism and Entertainment Resources shall be codified by adding and revising provisions to the San Diego Municipal Code as follows:

A. The following sections are to be added to, and inserted in numerical order into the existing provisions of, Division 1 of Article 5 of Chapter 3 of the San Diego Municipal Code, Transient Occupancy Tax.

### §35.0109 Establishment of Fair, Competitive Tourist Tax Rates

- (a) This section increases the City's Transient Occupancy Tax rate to enable the City to keep its competitive advantage over other major tourism destinations while at the same time generating additional general revenues to, by way of example and not limitation, support general government services, facilities and infrastructure, and the protection of the environment that make the City one of the nation's top tourism destinations.
- (b) Notwithstanding the tax imposed by Sections 35.0103, 35.0104, 35.0105, 35.0106, 35.0107, or 35.0108 and in addition thereto, for the privilege of Occupancy in any Hotel with at least 30 rooms available for Occupancy, any Recreational Vehicle Park, or any Campground, each Transient is subject to and shall pay an additional tax in the amount of 5%.
- (c) Notwithstanding the tax imposed by Sections 35.0103, 35.0104, 35.0105, 35.0106, 35.0107, or 35.0108 and in addition thereto, for the privilege of Occupancy in any Hotel with less than 30 rooms available for Occupancy, each Transient is subject to and shall pay an additional tax in the amount of 3.5%.
- (d) All revenues collected pursuant to the taxes imposed by the City under this section shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance. To this end, the tax imposed under this section is intended to be and shall be a general tax and not a special tax.

### §35.0121.5 Review of Records by City Auditor

To ensure that the City is collecting and accurately reporting and accounting for all Transient Occupancy Tax amounts that are due, the City Auditor shall have the same right as the City Treasurer to inspect records and apply audit procedures under Section 35.0121. It shall be unlawful for any person to refuse to allow or permit such audit to be conducted by the City Auditor after a lawful demand therefor by the City Auditor, even when the City Treasurer has not joined in or made the demand.

### §35.0139 Sunset Provisions for Section 35.0128(a)

- (a) Section 35.0128(a) shall terminate, be repealed, and have no further force or effect, and all legal authority, rights, and obligations conferred or imposed by Section 35.0128(a) shall be deemed withdrawn in their entirety, as of 11:59 p.m. on the earlier of the first December 31 or the first June 30 to occur after this section takes effect. Without in any way limiting the effect of the prior sentence, the limitation on the use of Transient Occupancy Tax imposed by Section 35.0128(a) shall have no force or effect after the earlier of the first December 31 or the first June 30 to occur after this section takes effect.
- (b) The sunset provisions contained in sub-section (a) of this section have no force or effect on Section 35.0128(b)-(c) or on the imposition or continuation of a tax pursuant to Section 35.0103. Sections 35.0103 and 35.0128(b)-(c) remain in full force and effect.
- (c) Nothing in this section is intended to eliminate or reduce any activity, program, or project previously funded from Transient Occupancy Tax revenues subject to Section 35.0128(a), including but not limited to arts and culture, capital improvements,

## BALLOT MEASURE (continued)

economic development, safety and maintenance of visitor-related facilities, and major events.

B. The following section is to be added to, and inserted in numerical order into the existing provisions of Division 25 of Article 1 of Chapter 6 of the San Diego Municipal Code, the San Diego Tourism Marketing District Procedural Ordinance.

### §61.2528 Sunset Provisions for San Diego Tourism Marketing District Procedural Ordinance

This Division and each of its sections shall terminate, be repealed, and have no further force or effect, and all legal authority, rights, and obligations conferred or imposed by this Division or any of its sections shall be deemed withdrawn in their entirety, as of 11:59 p.m. on the earlier of the first December 31 or the first June 30 to occur after this section takes effect. Without in any way limiting the effect of the prior sentence, no *assessment* may be imposed or collected pursuant to this Division after the earlier of the first December 31 or the first June 30 to occur after this section takes effect.

C. The following sections are to be added as Division 28 of Article 1 of Chapter 6 of the San Diego Municipal Code, Tourism- and Entertainment-Related Facilities and Infrastructure Protection and Improvement.

### §61.2801 Tourism- and Entertainment-Related Facilities and Infrastructure Protection and Improvement

(a) The purpose of this Division is to authorize structures, facilities, infrastructure, and land uses and to establish regulations that will broadly and collectively promote economically and environmentally sustainable tourism, in a responsible manner that minimizes the financial risk and maximizes the financial benefits for the City. The purpose of this Division is also to serve the needs of tourists and residents alike, as part of a set of related reforms to the City's overall management of its major tourism- and entertainment-related facilities and infrastructure (the other reforms being codified elsewhere in this Municipal Code). By way of example and not limitation, this Division will achieve its purposes by:

- (1) Facilitating the creation, preservation, and enhancement of access to park and open space in Mission Valley and along the Downtown San Diego Waterfront by limiting the City's ability to grant subsidies, while simultaneously creating incentives for public-private partnerships that benefit taxpayers, residents, and tourists.
- (2) Promoting efficiencies in the City's tourism planning, management, and sales and marketing, and ensuring that the City's priorities for the financing and administration of major tourism- and entertainment-related facilities and infrastructure align with the City's needs and financing capabilities.
- (3) Updating and harmonizing existing provisions of the Municipal Code that contribute to poor planning, management, and sales and marketing of major tourism- and entertainment-related facilities and infrastructure and impair the City's ability to achieve its tourism goals in a way that improves performance and economic benefits for taxpayers.

### §61.2802 Creation of Tourism-Financed Improvement Districts; Incorporation and Modification of Property and Business Improvement District Law of 1994

- (a) The purpose of this section is to allow for the creation of tourism-financed improvement districts that will serve the needs of tourists and residents alike.
- (b) The Property and Business Improvement District Law of 1994 ("PBID Law") is hereby incorporated into this Division by reference but shall be subject to all of the modifications and limitations provided in this section, which shall themselves be construed liberally to achieve the purposes of this Division, and shall be further subject to any and all other applicable legal requirements.

### BALLOT MEASURE (continued)

- (c) With respect to membership on the governing body of the district, for each such district, the governing body of the owners' association shall have at least one member who meets all of the following criteria:
  - (1) The member has been an auditor, forensic accountant, certified public accountant, or attorney with finance experience for at least five consecutive years prior to appointment to the governing body.
  - (2) The member has certified under penalty of perjury that not more than 10% of the value of his or her non-retirement investments during the preceding five years has been in one or more tourism-related businesses.
  - (3) The member has certified under penalty of perjury that not more than 10% of his or her gross income during the preceding five years has come from one or more tourism-related businesses.
  - (4) The member is recommended by the Mayor and approved by the City Council.
- (d) For each such district, the governing body of the owners' association shall have at least one member who meets all of the following criteria:
  - (1) The member is a member of a labor union for at least one year prior to appointment to the governing body.
  - (2) The member is recommended by the Mayor and approved by the City Council.
- (e) Each owners' association shall be considered a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose, except as follows:
  - (1) Each owners' association shall be considered a public entity for purposes of satisfying any mitigation measures that may be required of a district, the owners' association, or both pursuant to Section 61.2804(c)-(d).
  - (2) The board members and staff shall be considered public officials for purposes of California Government Code Section 1090. However, no board member or staff is financially interested in any contract made by him or her if the contract provides no greater material benefit to the board member or staff than it provides to any assessee in the district.
  - (3) Each owners' association shall be subject to and comply with any and all laws specified in California Streets and Highways Code Section 36612.
- (f) Not more than 90 days after the end of each such district's fiscal year, the owners' association shall file audited financial statements for the ended year with the City Clerk. The audited financial statements shall be accompanied by a certification from the chief financial officer or treasurer of the owners' association affirming under penalty of perjury that no expenditure during the ended year was made for any purpose not explicitly authorized by the management district plan and the annual report approved by the City Council for the ended year. The City shall not release any assessments collected for the district more than 90 days after the ended year unless and until the audited financial statements and certification required by this sub-section are filed with the City Clerk. The audited financial statements and certification shall be open for inspection and copying by the public.
- (g) No portion of the assessments collected for any such district may be used to pay for or otherwise provide any form of "activities" as that term is used in the PBID Law, including but not limited to any sales and marketing or promotion.
- (h) No portion of the assessments levied or collected for any such district may be used to pay for or otherwise provide any form of acquisition (by purchase, lease, or otherwise), development, design, entitlement, construction, operation, or maintenance of any



## BALLOT MEASURE (continued)

structure, facility, infrastructure, or use in the coastal zone under either of the following circumstances:

- (1) The structure, facility, infrastructure, or use in any way comprises or is intended to comprise an extension, expansion, annex or other component or portion of the San Diego Convention Center, or any activities undertaken there, beyond the physical footprint of the Convention Center structure as it existed at 111 West Harbor Drive in the City of San Diego on October 9, 2013; or
  - (2) The purpose of the structure, facility, infrastructure, or use is to provide convention, exhibition, meeting, or banquet opportunities like those provided at the Convention Center.
- (i) For each such district, the owners' association shall at all times maintain an Internet Web site and promptly and conspicuously publish there all of the following documents and other information:
- (1) The agendas of the governing body and any committees thereof, as if the owners' association were a "local agency" and the governing body and each committee were a "legislative body" as those terms are used in California Government Code Section 54954.2(d) (including its sub-parts). The published agendas shall include any and all back-up materials distributed to one or more members of the governing body or committee in connection with the meeting.
  - (2) The minutes of each meeting of the governing body and any committees thereof. The minutes shall include a copy of any and all materials submitted to the body or committee in connection with the meeting, except for any records that were distributed exclusively during an authorized closed-session meeting of the governing body or that are exempt from disclosure under the California Public Records Act.
  - (3) A file-stamped copy of the audited financial statements and certification required under sub-section (f) of this section.
  - (4) Any and all state and federal tax returns.
  - (5) Each management district plan as defined in the PBID Law.
  - (6) Each fiscal year's report as described in the PBID Law.
  - (7) For each fiscal year, the names, mailing addresses, phone number, e-mail address, and officer title (if any) for each member of the governing body of the owners' association and for any executive director or other officer or committee member who is not a member of the governing body.
  - (8) Any and all resolutions or ordinances of the City Council pertaining to the district.
  - (9) Any and all contracts (including any amendments thereto or other modifications thereof) between the City and the owners' association.
- The maintenance of the Internet Web site for the purpose of providing public access to the foregoing documents and other information shall not constitute sales and marketing or promotion prohibited under sub-section (e) of this section.
- (ii) None of the improvements financed by such a district may include any portion of the acquisition (by purchase, lease, or otherwise), development, design, entitlement, construction, operation, or maintenance of an entertainment or professional sports facility. If the improvements financed by a district consist of any convention center, exhibition, and meeting facilities described in Section 61.2804(b)(1) and are combined with any entertainment or professional sports facility, the incremental costs of acquisition, development, design, entitlement, construction, operation, and maintenance exclusively attributable to the portion of the combined facility added for entertainment-

### BALLOT MEASURE (continued)

or professional sports-facility purposes shall be paid from sources other than district assessments or any proceeds from bonds issued by the district.

- (k) Each of the property and business owners submitting the written petition for the creation of such a district shall be the holder of a valid Transient Occupancy Registration Certificate within the district.
- (l) "Improvement" as defined in the PBID Law may also include transportation infrastructure that allows tourists to move between frequently visited destinations in the San Diego region (e.g., streetcar lines between Balboa Park and Downtown, an airport intermodal transit center, and light-rail extensions), as well as maintenance, repairs, restoration, or remodeling of tourist-related facilities within the district's physical footprint.
- (m) The City's total annual administrative fee and other charges imposed on any such district and owners' association may not exceed 0.25% of the district assessments remitted to the City. This limitation may be increased each year based on any adjustment of the "Consumer Price Index for All Urban Consumers (CPI-U), U.S. city average, all items" on the first day of the fiscal year for which the charges are to be imposed.
- (n) The fiscal year of such district and of the owners' association shall at all times be the same as the City's fiscal year.
- (o) Nothing in this section imposes any limitations on such district's ability to increase assessments in order to secure adequate coverage for any debt it may incur. This includes but is not limited to assessments for funds used to make payments of premiums and other costs, fees, and expenses of an insurance policy or policies, for funds used to fund a cash, investment, or other reserve or maintenance account or accounts that are secured for the benefit of financing parties and for the payment of costs, fees, and expenses in connection therewith, for funds used to make payments in respect of such other instrument or instruments as may be agreed with the financing parties, or any combination thereof, in each case for the purpose of satisfying any such coverage requirement.
- (p) Beginning in such district's sixth fiscal year and continuing each fiscal year thereafter, the owners' association shall provide an annual written accounting of the amount of assessments received by the district over the preceding five fiscal years and the amount of such receipts that have accumulated without being spent, encumbered, or set aside during that five-year period for a future expenditure on one or more improvements authorized by the management district plan. The accounting shall be filed with the City Clerk not more than 90 days after the end of the district's fiscal year. The accounting shall be accompanied by a certification from the chief financial officer or treasurer of the owners' association affirming under penalty of perjury that the information contained in the accounting is true and correct. The City shall not release any assessments collected for the district more than 90 days after the ended year corresponding to the accounting unless and until the accounting and certification required by this sub-section are filed with the City Clerk. The accounting and certification shall be open for inspection and copying by the public.
- (q) Not more than 30 days after the accounting and certification described in sub-section (p) of this section is filed with the City Clerk, the owners' association shall remit to the City any and all receipts described in sub-section (p) that have not been spent, encumbered, or set aside for a future expenditure authorized by the management district plan up to the total of all deductions that may have been taken from Transient Occupancy Tax remittances by one or more Operators under Section 61.2807(b) or (c). This remittance constitutes the reimbursement of unused incentives taken by Operators to undertake the improvements in the management district plan; it does not constitute a forfeiture, penalty, or any other loss of a vested right because the incentives would not have been

## BALLOT MEASURE (continued)

authorized in the absence of a reasonable expectation that they would in fact be used for the purposes specified in the plan.

- (r) No portion of any of the assessments collected by such district may be used for any political purpose, including but not limited to supporting or opposing any initiative, referendum, or other ballot measure, or supporting or opposing any candidate for elective or other public office.
- (s) There shall be no limit on the number of such districts that may be created under this section. If any such districts are created:
  - (1) The first district shall be known as the "Downtown Tourism-Financed Infrastructure District." Its geographic area shall encompass the entirety of the 92101 and 92134 ZIP codes, as well as that portion of the 92113 ZIP code lying north of the Coronado Bridge and west of Interstate 5.
  - (2) The second district shall be known as the "Suburban Tourism-Financed Infrastructure District." Its geographic area shall encompass the entirety of the City except that portion encompassed by the Downtown Tourism-Financed Infrastructure District.
  - (3) More than one district may be created simultaneously.

The specification of the name and geographic area of any district is not intended to constitute the levy of any fee, charge, or other tax or assessment.

- (t) Any such district shall be entitled to borrow or loan money on commercially reasonable terms.
- (u) Nothing in this section is intended to require any expenditure of City funds for any particular purpose, including but not limited to any tourism-, convention-, or sports-related facility.

### **§61.2803 Approval of Tourism-Financed Improvement Districts Except to the extent otherwise prohibited or required law:**

- (a) The City Council shall ministerially approve the formation of any tourism-financed improvement district that meets the requirements of Section 61.2802, including any interim actions leading up to a final approval.
- (b) Final approval shall occur not more than 30 days after all legal prerequisites to final approval have been satisfied.
- (c) No interim action shall occur more than 30 days after all legal prerequisites for the interim action have been satisfied.
- (d) If the City Council fails to give any final approval or take any interim action within the time limits specified in this section, the matter shall be deemed approved or taken, as the case may be, by operation of law and without the need for further approval or action by the City Council.

### **§61.2804 Creation of Downtown Convention and Entertainment Overlay Zone**

- (a) The Downtown Convention and Entertainment Overlay Zone ("Overlay Zone") is hereby created and made applicable to all parcels of real property lying north of Imperial Avenue, west of 17th Street, south of K Street, and east of Park Boulevard in the City of San Diego.
- (b) In addition to any other structures, facilities, infrastructure, or uses authorized by the Municipal Code and applicable land-use plans, and in accordance with all other applicable legal requirements, the structures, facilities, infrastructure, and uses authorized within the Overlay Zone shall include the following:
  - (1) Convention center, exhibition, and meeting facilities;

## BALLOT MEASURE (continued)

- (2) Professional, semi-professional, collegiate, or recreational sports facilities; or
  - (3) Any structures, facilities, or infrastructure that provide for one or more authorized uses, including a single structure or facility that combines one or more authorized uses.
- (c) Each and every project involving one or more structures, facilities, infrastructure, or uses authorized by this section shall comply with any and all mitigation, monitoring, and reporting requirements that would be required under the California Environmental Quality Act in the same manner and to the same extent as a project that is not exempt from environmental review under the Act. The mitigation measures shall include, at a minimum, all of the following:
- (1) Construction that satisfies the Leadership in Environmental and Energy Design (LEED) silver standard as of the effective date of this section, or the standard's equivalent if approved by the U.S. Green Building Council, and a plan to reduce vehicle miles traveled to the project that includes incentives for the use of public transit.
  - (2) Compliance with all applicable federal, state, and local rules and regulations governing historical resources.
  - (3) The proponent or proponents of any project authorized by this section shall make to the San Diego Unified Port District a one-time payment of \$15 million no later than one year after the issuance of any certificate of occupancy for the project, in exchange for the Port District's binding legal commitment to match that payment with \$35 million over a 30-year period. At least 90% of the total \$50 million in funds shall be used exclusively for the development, design, entitlement, and construction of public park and recreational facilities to be included in Phase 2 of the Port District's North Embarcadero Visionary Plan, and up to 10% of the total funds shall be used exclusively to enhance public access and activate public uses along the Downtown San Diego Waterfront adjacent to the San Diego Convention Center. The funds may not be used for any purpose not expressly authorized by this paragraph, and in particular may not be used to satisfy any of the Port District's obligations under Section 1 of that certain Memorandum of Understanding commonly known as Port District Document No. 57019 filed in the Office of the District Clerk on November 15, 2010, except that up to one-half of the proceeds may be used to acquire the real property described in Section 1 (C) of the Memorandum of Understanding.
  - (4) The creation of a reserve fund sufficient to enable one public-agency recipient under Section 61.2806 to incur bonded indebtedness or other debt generating \$5 million in principal proceeds based on a repayment period of not more than 30 years to be used exclusively by the recipient for the development, design, entitlement, and construction of the Urban Rivers Scientific Interpretive Center specified in Section 61.2806(a)(1)(i). After such debt is incurred, at the beginning of each of its fiscal years, the public-agency recipient shall be entitled to an advance from the reserve fund in an amount equal to the recipient's actual out-of-pocket debt service for that fiscal year. The public-agency recipient's request for an advance shall be made in writing and certify under penalty of perjury that the advance will be applied only toward the debt service. The proceeds from the debt may not be used for any purpose not expressly authorized by this paragraph. Upon the full payment and discharge of the debt, including all principal and interest thereon, any funds remaining in such reserve fund shall be promptly paid to the public-agency recipient, to be used solely for the purposes prescribed in this paragraph.

## BALLOT MEASURE (continued)

Each of the measures required by this sub-section (c) is necessary to mitigate the potentially significant impacts of the projects contemplated by this section. However, the mitigation measure required by sub-section (c)(4) of this section serves to mitigate some of the potentially significant impacts of these projects as well as some of the potentially significant impacts of the activities contemplated by Section 61.2806(a)(1)(iv), which are themselves the result of moving development intensities between Mission Valley and Downtown San Diego in order to maximize economic benefits while minimizing environmental harm.

- (d) The mitigation required by sub-section (c) of this section shall be completed, or if not capable of being completed for non-financial reasons shall at least be legally enforceable by any member of the public, no later than the first issuance of any certificate of occupancy for the project in the case of sub-sections (c)(1)-(2), and no later than one year after the first issuance of any certificate of occupancy for the project in the case of sub-sections (c)(3)-(4). Except as otherwise required by sub-section (c), any project described in sub-sections (b)(1)-(3) of this section shall be exempt from the California Environmental Quality Act.
- (e) The City shall provide the public with an opportunity to review and comment on any proposed mitigation, monitoring, and reporting requirements under sub-sections (c) and (d) of this section and shall adopt the requirements at a public hearing noticed in accordance with the Land Development Code's requirements for Process Five decisions.
- (f) Nothing in this Division affects any vested rights in existence when this section takes effect. Minor modifications to any such vested rights may be processed ministerially, or otherwise in accordance with Process One of the Land Development Code.
- (g) Nothing in this section is intended to diminish the parking rights acquired by the San Diego Padres with respect to Tailgate Park.

### §61.2805

#### Protection of Open Space, Public Access, and Other Tourism-Related and -Frequented Facilities on Downtown San Diego Waterfront

- (a) The City shall not seek the approval of, operate, lease, own, loan money to or for, financially support, or otherwise directly or indirectly participate, whether through a joint powers authority or otherwise, in any form of acquisition, development, design, entitlement, construction, operation, or maintenance of any structure, facility, infrastructure, or use in the coastal zone that in any way comprises or is intended to comprise an extension, expansion, annex or other component or portion of the San Diego Convention Center beyond the physical footprint of the Convention Center structure as it existed at 111 West Harbor Drive in the City of San Diego immediately prior to the California Coastal Commission's approval of San Diego Unified Port District's Port Master Plan Amendment No. 6-PSD-MAJ-45-13 (Port District Master Plan Amendment no. 45) on October 10, 2013.
- (b) Nothing in sub-section (a) of this section is intended to apply to any structure, facility, infrastructure, or use in the coastal zone that is not contiguous to the San Diego Convention Center as described in sub-section (a) or that is not authorized by the Port Master Plan Amendment identified in sub-section (a), or intended to apply to the City's liability for deferred maintenance of the existing Convention Center as of the effective date of this section.
- (c) Nothing in this Division prevents the City from seeking the qualified electors' approval of a future expansion of the San Diego Convention Center in the coastal zone.
- (d) The City may refinance any bonded indebtedness it has incurred in connection with the San Diego Convention Center in order to obtain a lower interest rate or other savings entirely applied to pay down the principal amount of the indebtedness. In refinancing, however, the City may not extend the term of any existing bonded indebtedness.

## BALLOT MEASURE (continued)

§61.2806

### Protection and Enhancement of Mission Valley Options for Shared Visitor and Resident Use Including Eco-Tourism, Higher Education, Environmental Science, and Professional and Collegiate Sports

- (a) As home to the primary stadium of the San Diego Chargers, Qualcomm Stadium in Mission Valley is both a source of civic pride and an attraction to tourists. The approximately 166-acre site also has high ecological value in a high-density area of the City that includes numerous existing hotels and other hospitality infrastructure (including public transportation) in close proximity to the site. As a result, the site provides the City and the public with the opportunity to allow for future development that combines environmental preservation, education, eco-tourism, recreation, and other compatible public uses that together maximize the tourism and public benefit of and access to this land. In furtherance of the foregoing, if at any time the Qualcomm Stadium site ceases to serve as the location of the home stadium for the Chargers or another National Football League franchise, then the City is authorized to sell the approximately 166-acre site directly, or indirectly through structured conduit transactions, to San Diego State University, the University of California at San Diego, the San Diego River Conservancy, any San Diego Community College, or any combination of such public agencies (collectively, "Qualified Recipient"), subject to all of the following conditions, limitations, and procedures:
- (1) The instruments for the final transfer of possession, ownership, or use of the site to the Qualified Recipient shall include such use restrictions and covenants running with the land, for the benefit of the City, that are necessary to ensure that all requirements of this section are satisfied. The transfer instruments, including all required restrictions and covenants, shall be made available for public inspection at least 30 days prior to their execution by the City. At a minimum, the restrictions and covenants shall ensure the following:
- (i) The portion of the site (approximately 28 acres) proximate to the San Diego River and bordered generally on the north by the elevated trolley line shall be reserved exclusively in perpetuity for restoration of that segment of the River in accordance with the San Diego River Conservancy's Strategic Plan Update 2012-2017 and other planning documents applicable to the Conservancy. A portion of the site in reasonable proximity to the existing trolley station on the site shall also be reserved exclusively and in perpetuity for and developed as an Urban Rivers Scientific Interpretive Center, to be operated by the Qualified Recipient as a center for eco-tourism, teaching, public education, and scientific research, including the monitoring of the River from its source to the Pacific Ocean. The requirements of this paragraph shall be satisfied at the same time as or before the requirements of sub-section (a)(1)(iv) of this section are satisfied, but in any event not more than five years after the first transfer of ownership.
- (ii) Separate from and in addition to the portion of the site reserved in sub-section (a)(1)(i) of this section, at least 22 acres of the site shall be reserved exclusively in perpetuity for and developed and maintained as active recreational space, to be designated for shared use by all members of the public, including tourists, and not merely university-affiliated persons. This portion of the site shall be located in reasonably close proximity to the existing trolley station in order to encourage the use of public transit. The requirements of this paragraph shall be satisfied at the same time as or before the requirements of sub-section (a)(1)(iv) of this section are satisfied, but in any event not more than five years after the first transfer of ownership. The site's planners and designers shall use their best efforts to maximize shared-use recreational space. At least one-third of the portion of the site

### BALLOT MEASURE (continued)

described in this paragraph shall be recreational use that is open to the public and not subject to reservation for organized university use.

- (iii) To the extent practicable, there shall be an 8- to 10-foot-wide continuous walking and biking path or trail incorporating the entire site. There shall be sufficient paths or trails connecting the portions of the site described in sub-section (a)(1)(i) of this section to the portions of the site described in sub-section (a)(1)(ii) of this section to ensure active use of both portions. The requirements of this paragraph shall be satisfied at the same time as or before the requirements of sub-section (a)(1)(iv) of this section are satisfied, but in any event not more than five years after the first transfer of ownership. That portion of the path and trail passing through the area described in sub-section (a)(1)(ii) of this section may be counted toward satisfying the size requirement of that area.
- (iv) The portion of the site not covered by sub-sections (a)(1)(i)-(iii) of this section shall be reserved exclusively and in perpetuity for and developed as university-related facilities to support university uses and activities (e.g., hospitality education or environmental research), including but not limited to student and faculty housing, classroom and administrative buildings, campus-serving commercial buildings, research and development facilities, and intramural and interscholastic sports facilities, such as a stadium for football, soccer, or both (not in excess 40,000 seats). Nothing in this paragraph precludes shared university and other public uses of any facility constructed on the site.
- (v) For purposes of the California Environmental Quality Act, the preservation, enhancement, and access measures described in sub-sections (a)(1)(i)-(iii) of this section shall be treated as components of any necessary mitigation for the impacts of the development described in sub-section (a)(1)(iv) of this section and Section 61.2804. In addition, the measures described in sub-sections (a)(1)(i)-(iii) and the limitations on the development described in sub-section (a)(1)(iv) are necessary to protect the Pacific Ocean from pollution and other harmful contaminants that are carried from the site to the San Diego River and then discharged into the Pacific Ocean.
- (2) The City may reserve for itself, through easements or as it otherwise deems necessary or appropriate, any and all rights and privileges necessary or convenient to the City in carrying out any of its municipal functions on or through the site, including but not limited to groundwater rights.
- (3) In order to prevent real-estate speculation, the total sale price of the site shall under no circumstances be lower than the fair-market value of the property as determined by any appraisal report submitted to the City between January 1, 2015 and August 1, 2015.
- (4) The Qualified Recipient of the property shall provide written confirmation to the City, prior to the transfer's completion, that the Qualified Recipient is ready, willing, and able to receive the property immediately upon the transfer's closing and subject to all other conditions imposed by this section. The deeds, covenants, and other instruments necessary to transfer possession, ownership, or use of the property from the City to the Qualified Recipient shall be recorded in the San Diego County Recorder's Office.
- (5) All development of the site shall be consistent, to the extent practicable, with the goal of creating a fully walkable, bikeable, transit-oriented site that serves members of the university community, tourists, and City residents alike. To the extent practicable, all structures on the site shall employ photovoltaic or next-

## BALLOT MEASURE (continued)

generation renewable-energy technology in order to generate electricity for on-site use.

- (6) All financing for the development of the site under this sub-section (a) shall be the responsibility of the Qualified Recipient, and nothing in this section is intended to limit the financing mechanisms available to the Qualified Recipient. However, nothing in this section authorizes the City to expend any funds or other resources for any purpose, activity, or use authorized by this section except for the limited purpose of assisting in the achievement of the goal specified in sub-section (a) (5) of this section.
  - (7) The City shall comply with all other laws applicable to the sale.
  - (8) The sale and development of the site contemplated by this sub-section (a) shall not be exempt from the California Environmental Quality Act.
  - (9) All proceeds received by the City from the sale contemplated by this sub-section (a) shall be allocated and deposited as required by law. It is the sense of the qualified electors, in enacting sub-section (a), that any and all proceeds that may be lawfully directed to the City's Infrastructure Improvement Fund should be used for the purposes of the Fund.
  - (10) The conditions, limitations, and procedures prescribed throughout this sub-section (a) are intended to expedite the process of transferring possession, ownership, or use of the Qualcomm Stadium site to the Qualified Recipient for the purposes set forth in sub-section (a). Such purposes constitute bona fide governmental purposes under City Charter Section 221. Furthermore, to the extent that the sale or development authorized by this section constitutes a sale or exchange that requires ratification of the electors under Section 221, the enactment of this section is intended to constitute the requisite ratification.
  - (11) As used in this sub-section (a), "Qualified Recipient" also includes San Diego State University, the University of California at San Diego, the San Diego River Conservancy, any San Diego Community College, or any combination of such public agencies, any private party (including but not limited to for-profit and non-profit entities), or any combination of the foregoing that seeks to obtain the approximately 166-acre site for the purpose of obtaining the entitlements to carry out the design, development, financing, construction, operation, and maintenance of the site in accordance with the conditions, limitations, procedures, and other requirements and intended uses set forth in sub-section (a) and to subsequently provide for possession, ownership, use, or other control of all or portions of the site to one or more of the aforementioned public agencies as necessary to satisfy such requirements and intended uses; "San Diego State University" includes any and all of the SDSU auxiliary organizations and foundations, and the Trustees of the California State University acting for the benefit of SDSU; "University of California at San Diego" includes any and all of the UCSD auxiliary organizations and foundations, and the Regents of the University of California acting for the benefit of UCSD; "San Diego Community College" includes any and all community colleges located in the City of San Diego and each college's board of trustees acting for the college's benefit; and "San Diego Chargers" and "Chargers" include any successor in interest.
- (b) Except as provided in sub-section (c) of this section, nothing in this Division is intended (i) to affect the project that is within the scope of that certain Draft Environmental Impact Report for the Qualcomm Stadium Reconstruction Project (City of San Diego Project No. 437916; State Clearinghouse No. 2015061061); (ii) to exempt the project that is the subject of the Draft Environmental Impact Report from the California Environmental Quality Act; (iii) as a vote of the qualified electors to authorize or endorse any expenditure



## BALLOT MEASURE (continued)

of public funds for the project that is the subject of the Draft Environmental Impact Report or to otherwise affect the spending authority of the City with regard to such an expenditure; or (iv) as a vote of the qualified electors to authorize or endorse any sale or other disposition of the Qualcomm Stadium site other than what is described in sub-section (a) of this section.

(c) Because of the extraordinary environmental benefits of protecting the San Diego River as a tributary to the Pacific Ocean, enhancing public access to the River, creating recreational and environmental opportunities for tourists and residents along the River, improving water quality, and creating important open space in Mission Valley, and because Qualcomm Stadium has operated in Mission Valley for decades and the operation of a new stadium would have fewer adverse environmental impacts than the existing stadium, the project described in that certain Draft Environmental Impact Report identified in sub-section (b) of this section shall be exempt from the California Environmental Quality Act if all of the following conditions are satisfied:

- (1) The City Council certifies a final version of the Draft Environmental Impact Report, and no aspect of the scope of the project under the final certified version in any way exceeds the scope of the project as described in the Draft Environmental Impact Report, including but not limited to the project's size, facilities, and use.
- (2) The final certified version of the Draft Environmental Impact Report contains at least the same mitigation measures that are specified in the Draft Environmental Impact Report and a requirement that all development of the site be consistent with ensuring adequate and appropriately managed riparian buffers for protecting riparian habitat of the San Diego River and Murphy Canyon Creek corridors.
- (3) None of the mitigation measures in the final certified version of the Draft Environmental Impact Report is less stringent than the mitigation measures that are specified in the Draft Environmental Impact Report, and all of the mitigation measures in the final certified version are adopted to the same extent as, and enforceable in the same manner as, mitigation measures for the project as if it were not exempt from the California Environmental Quality Act.
- (4) No later than the time when the City Council certifies the final version of the Draft Environmental Impact Report, the City has made a binding legal commitment to develop the remainder of the Qualcomm Stadium site in accordance with sub-section (a) of this section.
- (5) The project fully complies with the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 as it existed on October 26, 2015, including but not limited to satisfying the California Legislature's finding and declaration in Public Resources Code Section 21178(e) that the project does not require any taxpayer financing by or from any public agency, including but not limited to the City.

If the City fails to satisfy each of the foregoing conditions, then sub-section (b) shall continue to apply and the City may proceed with the project but without the exemption provided by this sub-section (c).

### **§61.2807 Financial Incentives and Conditions for Tourism-Related Facilities and Infrastructure**

- (a) Except as expressly authorized in sub-sections (b)-(d) of this section, the City shall not directly or indirectly provide any form or manner of financial support, lend its credit, pledge anything of value, allow any public asset to be used for less than fair-market value as determined by an independent fee appraiser, or otherwise make any kind of expenditure or commitment for a future expenditure that would in any way facilitate either of the following:

### BALLOT MEASURE (continued)

- (1) The development, design, entitlement, construction, operation, or maintenance of any structure, facility, infrastructure, or use described in Section 61.2804(b)(1)-(3); or
- (2) Any activity or service in furtherance of any structure, facility, infrastructure, or use described in Section 61.2804(b)(1)-(3) other than public activities and services generally made available throughout the City to the public at large, such as police, fire protection, water, and sewer service.

Nothing in this sub-section (a) shall be construed as prohibiting the City from making any real property it owns or controls within the Overlay Zone available on terms that the City deems reasonable in order to facilitate any development, design, entitlement, construction, operation, or maintenance of any structure, facility, infrastructure, or use described in Section 61.2804(b)(1) or (b)(3) or any activity or service in furtherance thereof, or in furtherance of the public's interest in maximizing the City's Transient Occupancy Tax revenues including, without reservation, the capture and use of Transient Occupancy Tax increment generated from new construction projects. Any assistance provided by the City pursuant to this paragraph shall comply with all other applicable legal requirements.

Further, nothing in this sub-section (a) shall apply to a project on a parcel within the geographic boundaries of the Overlay Zone that received any land-use approval before this Division takes effect.

It is the sense of the qualified electors that the highest and best use of land within the Overlay Zone is an off-waterfront expansion of the San Diego Convention Center.

- (b) Any Operator of a Hotel who pays an assessment to the Downtown Tourism-Financed Improvement District created in accordance with the requirements of Section 61.2802 may, in the Operator's sole discretion, deduct from the Transient Occupancy Tax remitted to the City by the Operator pursuant to Division 1 of Article 5 of Chapter 3 of this Municipal Code a portion of the assessment paid by the Operator to the district, subject to all of the following procedures and limitations:

- (1) The deduction from the Transient Occupancy Tax remittance may be taken no sooner than when the Operator remits its assessment for the district and only to the extent of the assessment amount being paid with the remittance.
- (2) Regardless of how frequently an Operator remits Transient Occupancy Tax, under no circumstances may the deduction from any remittance exceed the total amount of the assessment actually paid by the Operator during the remittance period or the deduction ceiling for that period, whichever is less. As used in this sub-section (b)(2), "deduction ceiling" means the product of the total Rent subject to Transient Occupancy Tax during the remittance period multiplied by 2%.

For example, assuming that the total Rent during the remittance period is \$100, the deduction ceiling described in this sub-section would be represented by the following formula:  $\$100 * 0.02 = \$2$ .

- (c) Any Operator of a Hotel who pays an assessment to the Suburban Tourism-Financed Improvement District created in accordance with the requirements of Section 61.2802 may, in the Operator's sole discretion, deduct from the Transient Occupancy Tax remitted to the City by the Operator pursuant to Division 1 of Article 5 of Chapter 3 of this Municipal Code a portion of the assessment paid by the Operator to the district, subject to all of the following procedures and limitations:

- (1) The deduction from the Transient Occupancy Tax remittance may be taken no sooner than when the Operator remits its assessment for the district and only to the extent of the assessment amount being paid with the remittance.

### BALLOT MEASURE (continued)

- (2) Regardless of how frequently an Operator remits Transient Occupancy Tax, under no circumstances may the deduction from any remittance exceed the total amount of the assessment actually paid by the Operator during the remittance period or the deduction ceiling for that period, whichever is less. As used in this sub-section (c)(2), "deduction ceiling" means the product of the total Rent subject to Transient Occupancy Tax during the remittance period multiplied by the actual rate of assessment up to 2%.

For example, assuming that the total Rent during the remittance period is \$100, and that the actual rate of assessment is 1.5%, the deduction ceiling described in this sub-section would be represented by the following formula:  $\$100 \times 0.015 = \$1.50$ .

- (3) The other provisions of this sub-section (c) notwithstanding, no deduction may be taken if the Operator is not being assessed by the district (i) at the rate of not more than 0.25% for the maintenance, repair, restoration, or remodeling of the San Diego Convention Center within its existing physical footprint in the coastal zone; and (ii) at the additional rate of at least 0.25% for the acquisition, development, design, entitlement, construction, operation, and maintenance of the structures, facilities, infrastructure, and uses necessary for an expansion of the San Diego Convention Center in the Overlay Zone.

- (d) Any Operator of a Hotel who pays an assessment to a tourism marketing district that is not operating under the San Diego Tourism Marketing District Procedural Ordinance as codified in Division 25 of Article 1 of Chapter 6 of this Municipal Code at the time this section takes effect may, in the Operator's sole discretion, deduct from the Transient Occupancy Tax remitted to the City by the Operator pursuant to Division 1 of Article 5 of Chapter 3 of this Municipal Code a portion of the assessment paid by the Operator to the tourism marketing district, subject to all of the following procedures and limitations:

- (1) The deduction from the Transient Occupancy Tax remittance may be taken no sooner than when the Operator remits its assessment for the district and only to the extent of the assessment amount being paid with the remittance.

- (2) Regardless of how frequently an Operator remits Transient Occupancy Tax, under no circumstances may the deduction from any remittance exceed the total amount of the assessment actually paid by the Operator during the remittance period or the deduction ceiling for that period, whichever is less. As used in this sub-section (d)(2), "deduction ceiling" means the product of the total Rent subject to Transient Occupancy Tax during the remittance period multiplied by 0.55% in the case of a Hotel with less than 30 rooms available for Occupancy, or by 2% in the case of a Hotel with at least 30 rooms available for Occupancy.

For example, assuming that the total Rent during the remittance period is \$100 for an Operator of a Hotel with at least 30 rooms, the deduction ceiling described in this sub-section would be represented by the following formula:  $\$100 \times 0.02 = \$2$ .

As a further example, assuming that the total Rent during the remittance period is \$100 for an Operator of a Hotel with less than 30 rooms, the deduction ceiling described in this sub-section would be represented by the following formula:  $\$100 \times 0.0055 = \$0.55$ .

- (e) Sub-sections (b)-(d) of this section shall have no force or effect while Section 35.0128(a) of this Municipal Code remains in force and effect.

## BALLOT MEASURE (continued)

### §61.2808 Governance of Tourism Sales and Marketing and Convention Center Bookings; Withdrawal of Authority to Outsource Governance and Bookings; Alternative Financing for Off-Waterfront Convention Center Expansion

- (a) In order to maximize the City's Transient Occupancy Tax revenues, as well as optimize the planning and budgeting process for tourism- and entertainment-related facilities and infrastructure, it is the sense of the qualified electors that the City shall take all reasonable steps to consolidate City-wide tourism and San Diego Convention Center management, sales and marketing, and bookings.
- (b) The City may enter into a management agreement with a private contractor to manage and oversee the operations and maintenance of the San Diego Convention Center, including any related facility outside the coastal zone. Any such agreement shall be subject to the following procedures and limitations:
- (1) The management agreement shall give the contractor responsibility for all short-term and long-term bookings at the Convention Center and any related facility under the City's control immediately prior to the making of the agreement.
  - (2) The management agreement shall require the contractor to assume all liabilities, debts, and other contractual obligations, and other obligations of the City, the San Diego Convention Center Corporation, and the Convention Center Expansion Financing Authority in existence at the time the agreement between the City and the contractor is made, including but not limited to deferred maintenance and current maintenance, labor and employment agreements, booking commitments, and lease agreements, except that the contractor need not assume, and the City shall retain, the City's debt-service obligations under any indentures and related contractual obligations for bonded indebtedness related to the Convention Center. Except as expressly permitted in the preceding sentence, the contractor may not assume less than all such liabilities, debts, contractual obligations, and other obligations. Prior to the City's approval of the management agreement, the contractor shall submit a detailed written plan specifying how and when each assumed obligation will be satisfied. The plan shall ensure that all obligations that were not satisfied by the City prior to its approval of the management agreement, and all obligations that must be satisfied by the City during the term of the management agreement but are being assumed by the contractor, are satisfied by the contractor in a timely manner and in any event no later than the end of the term of the management agreement. Not more than 90 days after the end of each fiscal year of the contractor, the contractor's chief executive officer or president shall certify under penalty of perjury that the contractor satisfied all obligations that were required to be satisfied according to the plan during the ended fiscal year. The annual certification shall include the information required by sub-sections (b) (ii)(i)-(ii) of this section. The City shall not make any payment to the contractor, including any reimbursement, more than 90 days after the end of the contractor's fiscal year unless and until the City receives the certification required by this sub-section.
  - (3) The City may not compensate the contractor or provide any direct or indirect financial support of any kind to the contractor in connection with the management agreement, except as expressly authorized by sub-section (b)(4) of this section. The contractor may hire a fee-for-service manager to carry out the contractor's obligations under the management agreement, at no cost to the City. The contractor's decision to hire such a manager shall not relieve the contractor of its obligations to ensure the performance required by the management agreement with the City, or change the nature of the relationship between the City and the contractor under the agreement.

### BALLOT MEASURE (continued)

- (4) The City, the contractor, or both may enter into any other agreement with any third party for the purpose of generating assessments or other revenues that can be used by the contractor to promote the City as a tourist destination or to compensate the contractor for its services under the management agreement with the City, provided that there is no cost to the City beyond that authorized by sub-section (b)(3) of this section. Nothing in this paragraph relieves the City of its obligation to comply with all applicable laws if its involvement is required for the generation of such assessments or revenues.
- (5) The contractor's governing body shall have at least one member who meets all of the following criteria:
  - (i) The member has been an auditor, forensic accountant, certified public accountant, or attorney with finance experience for at least five consecutive years prior to appointment to the governing body.
  - (ii) The member has certified under penalty of perjury that not more than 10% of the value of his or her non-retirement investments during the preceding five years has been in one or more tourism-related businesses.
  - (iii) The member has certified under penalty of perjury that not more than 10% of his or her gross income during the preceding five years has come from one or more tourism-related businesses.
  - (iv) The member is recommended by the Mayor and approved by the City Council.
- (6) The contractor's governing body shall have at least one member who meets all of the following criteria:
  - (i) The member is a member of a labor union for at least one year prior to appointment to the governing body.
  - (ii) The member is recommended by the Mayor and approved by the City Council.
- (7) The management agreement may not contain any term or provision that is inconsistent with this section, but it may contain any other term or provision that is consistent with this section and that the City deems necessary or appropriate.
- (8) The contractor may be, but is not required to be, a tourism-financed improvement district created and approved under Sections 61.2802 and 61.2803; or a tourism marketing district that is operating under a legal authority other than the San Diego Tourism Marketing District Procedural Ordinance as codified in Division 25 of Article 1 of Chapter 6 of this Municipal Code at the time this section takes effect.
- (9) The contractor's governing board shall be subject to the Ralph M. Brown Act, and the contractor shall be subject to the California Public Records Act, for all purposes related to the management agreement.
- (10) A fiduciary relationship between the contractor and the City under the management agreement is created by this section, with the contractor being required to act as a fiduciary toward the City and over all of the assets, operations, and other subject matter of the agreement. This relationship includes but is not limited to the contractor's obligation to maximize the City's return on the assets, operations, and other subject matter of the management agreement. Any management agreement under which the contractor is not deemed to be a fiduciary shall be void *ab initio*.
- (11) The annual certification required under sub-section (b)(2) of this section shall include all of the following information:

### BALLOT MEASURE (continued)

- (i) The City's total Transient Occupancy Tax revenues during the recently completed fiscal year that were directly attributable to events taking place at the San Diego Convention Center during that fiscal year.
  - (ii) The City's total expenditures related to the San Diego Convention Center during the recently completed fiscal year.
- (12) If any labor agreement expires and the parties reach an impasse in attempting to renegotiate, extend, amend, or otherwise modify that agreement, the matter shall be submitted to binding arbitration.
- (c) The City shall have no authority to enter into a management agreement as described in sub-section (b) of this section or any other agreement with a private contractor concerning the management of or bookings at the San Diego Convention Center, unless and until the following condition is satisfied:
- (1) A tourism-financed improvement district has been created and approved under Sections 61.2802 and 61.2803 exclusively for the acquisition, development, design, entitlement, construction, operation, and maintenance of the structures, facilities, infrastructure, and uses necessary for an expansion of the San Diego Convention Center in the Overlay Zone with a size deemed appropriate by the City, and all required maintenance, for a period of operation not less than 20 years.
- (d) If the condition described in sub-section (c) of this section is not satisfied by the last day of the sixtieth calendar month after this section takes effect, then all of the following shall apply:
- (1) The City's authority to enter into a management agreement pursuant to sub-section (b) of this section shall be deemed withdrawn, and sub-section (b) shall have no further force or effect.
  - (2) Sections 61.2802 and 61.2803 shall be deemed withdrawn and shall have no further force or effect, and no district created thereunder shall have the legal authority to continue its operations.

#### §61.2809 Definitions

- (a) As used in this Division, "coastal zone" means the geographical area defined by California Public Resources Code Section 30103 (and any regulations thereunder), regardless of whether the City has land-use or other regulatory authority within the area.
- (b) As used in this Division, "City" shall include any and all departments, agencies, and offices of the City, and shall also include each and every discretely presented component unit, blended component unit, or other component unit of the City as identified in the Comprehensive Annual Financial Report for the City of San Diego for Fiscal Year Ended June 30, 2014, and each and every component unit of any kind that may be included in a future Comprehensive Annual Financial Report for the City of San Diego.
- (c) As used in Section 61.2808, "private contractor" means an entity that is not a discretely presented component unit, blended component unit, or other component unit of the City as identified in the Comprehensive Annual Financial Report for the City of San Diego for Fiscal Year Ended June 30, 2014.
- (d) As used in this Municipal Code, "independent fee appraiser" means an appraiser who is selected for the assignment solely by the City, and who certifies in writing under penalty of perjury and based on personal knowledge that he or she has had no financial relationship of any kind with any party to the proposed transaction other than the City within a one-year period prior to being selected by the City for the assignment.
- (e) As used in Sections 61.2802 and 61.2807, "Operator" and "Hotel" have the same meanings that they have under Section 35.0102 of this Municipal Code.

## BALLOT MEASURE (continued)

- (f) As used in this Division, "project" has the same meaning that it has under California Public Resources Code Section 21065.
- (g) As used in this Division, "qualified electors" has the same meaning that it has under San Diego City Charter Section 6.
- (h) As used in this Division, "California Public Records Act" refers to the California Public Record Act, California Government Code Section 6250 *et seq.*
- (i) As used in this Division, "Ralph M. Brown Act" refers to the Ralph M. Brown Act, California Government Code Section 54950 *et seq.*
- (j) As used in this Division, "California Environmental Quality Act" refers to the California Environmental Quality Act, California Public Resources Code Section 21000 *et seq.*
- (k) As used in Section 61.2802, "Transient Occupancy Registration Certificate" has the same meaning that it has under Section 35.0113 of this Municipal Code.
- (l) As used in Section 61.2807(b)-(d), "Rent" has the same meaning that it has under Section 35.0102 of this Municipal Code.
- (m) As used in this Division, "Property and Business Improvement District Law of 1994" and "PBID Law" refer to the Property and Business Improvement District Law of 1994, California Streets and Highways Code, Division 18, Part 7, Section 36600 *et seq.*

### **§61.2810 Construction of Division**

In the event of any conflict between one or more provisions of this Division and any other provision of the Municipal Code, the provisions of this Division shall govern to the extent of the conflict. In the event of any conflict between one or more provisions of this Division and any provision of the Property and Business Improvement District Law of 1994, this Division shall control to the extent of the conflict.

### **§61.2811 Limitations Period for Judicial Review**

No action to challenge the validity of any portion of this Division shall be maintained unless such action is commenced within 90 days after the Division takes effect.

### **Part 5. Effective Date; Amendment**

This Ordinance shall take effect 30 days after the date of the election at which the qualified electors approve it. The Ordinance may be repealed or amended only by a vote of the qualified electors. As used in this paragraph and the next paragraph, "qualified electors" has the same meaning that it has under San Diego City Charter Section 6.

### **Part 6. Interdependence; Interpretation**

The provisions of Part 4 of this Ordinance are inseparably interconnected and interdependent. If any portion of Part 4 of this Ordinance is held to be invalid by a court of competent jurisdiction after any and all appeals are complete, then none of the remaining portions of the Ordinance shall have any force or effect.

The need for responsible comprehensive and integrated planning, financing, management, and sales and marketing for major tourism- and entertainment-related resources as described in this Ordinance is so important to the qualified electors voting on this measure that if any portion of Part 4 of the Ordinance is invalid as described above then the remaining portions of the Ordinance would not have been approved by them without the invalid portion of Part 4.

Nothing in this Ordinance is intended to conflict with any requirement, prohibition, or other provision of the San Diego City Charter, the California Constitution, or any other controlling legal authority. Constructions of this Ordinance that give rise to such a conflict shall be avoided to the maximum extent permitted by law.

### **Part 7. Resolution of Conflicting Provisions in Other Measures**

In the event that this Ordinance and another ordinance or ordinances relating to one or more portions of the subject matter of this Ordinance pass at the same election, but this Ordinance receives a greater number of

## BALLOT MEASURE (continued)

affirmative votes, it is the intent of the People of the City of San Diego that the provisions of this Ordinance shall prevail in their entirety and the provisions of all other related ordinances shall be null and void.

The other provisions of law notwithstanding, in the event that this Ordinance and another ordinance or ordinances relating to one or more portions of the subject matter of this Ordinance pass at the same election, but such other ordinance or ordinances receive a greater number of affirmative votes, it is the intention of the People of the City of San Diego that the provisions of this Ordinance shall also take effect to the extent that they are not in direct conflict with the provisions of such other ordinance or ordinances.

### Part 8. Defending the Ordinance

In the event that the City declines to defend or declines to appeal an adverse judgment against the Ordinance, it is the intent of the People of the City of San Diego to grant formal legal authority to the Ordinance's proponents or any of their designees to defend this Ordinance, either by intervening in or by defending the Ordinance on behalf of the People and the City in a legal proceeding; because the proponents of this Ordinance have a direct and personal stake in defending this Ordinance.

In the event that a proponent or a proponent's designee is defending this Ordinance in a legal proceeding because the City has declined to defend it or declined to appeal an adverse judgment against it, the proponent or the proponent's designee shall: (1) act as agents of the People of the City of San Diego who approved this Ordinance and the City; (2) enjoy and be subject to all ethical, legal, and fiduciary rights and duties applicable to agents of the People and the City in such legal proceedings; and (3) take or be subject to the Oath of Office prescribed by Section 211 of the San Diego City Charter for the limited purpose of acting on behalf of the People and the City in such legal proceeding.

No action to challenge the validity of any portion of this Ordinance shall be maintained unless such action is commenced within 90 days after the Ordinance takes effect. In the event of such a challenge, the summons and complaint shall be served, as required by law, on the City and on the proponent of this Ordinance not more than 30 days after the challenge is commenced. The court shall dismiss any challenge that is not commenced within the time period prescribed in this paragraph.

If any of the deadlines prescribed in the preceding paragraph is held to be invalid by a court of competent jurisdiction, the court shall be authorized to reform the deadline to the shortest period of time permissible by law.

### Part 9. Proponent Accountability

The People of the City of San Diego hereby declare that the proponent of this Ordinance should be held civilly liable if this Ordinance, after passage, is struck down in whole or in part, by a court of competent jurisdiction for being impermissible pursuant to the federal law, state law, the city charter, or any other controlling legal authority. Such an impermissible Ordinance is a misuse of the City's electoral resources, and the proponent must be held accountable for such an occurrence.

If this Ordinance, after passage, is struck down in whole or in part, by a court of competent jurisdiction for being impermissible pursuant to the federal law, state law, the city charter, or any other controlling legal authority, and all avenues for appealing and overturning the court's decision have been exhausted, the proponent shall pay a civil penalty of \$5,000 to the City's General Fund for failure to be the proponent of a wholly permissible Ordinance. No party or entity may waive this civil penalty.

### Relevant Documents Referred to in the Ordinance

#### Division 1 of Article 5 of Chapter 3 of the San Diego Municipal Code, Transient Occupancy Tax

##### **Section 35.0101 Purpose and Intent**

- (a) It is the purpose and intent of the City Council that there shall be imposed a tax on Transients.
- (b) Some of the proceeds of the tax on Transients shall be used for promoting the City of San Diego, including the planning, construction, maintenance and operation of tourist-related cultural, recreational and convention facilities, as more particularly set forth in



## BALLOT MEASURE (continued)

Chapter 3, Article 5, Division 1, and for those additional general governmental purposes as more particularly set forth in Chapter 3, Article 5, Division 1, as the City Council may from time to time provide in accordance with the Charter of the City and the City Council's appropriation ordinance.

### Section 35.0102 Definitions

The following definitions are applicable to Chapter 3, Article 5, Division 1.

"Campground" means any park or real property where a Person may locate a tent, trailer, tent trailer, pick-up, camper, or other similar temporary structure for the purposes of lodging, dwelling, or sleeping, whether or not water, electricity, or sanitary facilities are provided.

"Collected" means the time at which the Rent is earned if an Operator uses the accrual basis of accounting, or the time at which Rent is received if an Operator uses the cash basis of accounting. "Hotel" means any structure or any portion of any structure which is occupied, or intended or designed for Occupancy, by Transients for dwelling, lodging, or sleeping purposes, and is held out as such to the public.

"Hotel" does not mean any hospital, convalescent home, or sanitarium.

"Occupancy" means the use or possession, or the right to the use or possession, of any room, or portion thereof, in any Hotel, or space in a Recreational Vehicle Park, or Campground for dwelling, lodging, or sleeping purposes.

"Operator" means the Person who is the proprietor of the Hotel, Recreational Vehicle Park, or Campground, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. "Operator" includes a managing agent, a resident manager, or a resident agent, of any type or character, other than an employee without management responsibility.

"Recreational Vehicle" means any passenger vehicle, house car, trailer coach, camper, or camper trailer, as defined in California Vehicle Code sections 242, 243, 362, 465, 635, or California Health and Safety Code section 18010.

"Recreational Vehicle Park" means any park or location where a Recreational Vehicle may be parked for the purposes of lodging, dwelling, or sleeping, whether or not water, electricity, or sanitary hookup facilities are provided. A "Recreational Vehicle Park" may include a Campground.

"Rent" means the total consideration charged to a Transient as shown on the guest receipt for the Occupancy of a room, or portion thereof, in a Hotel, or a space in a Recreational Vehicle Park or Campground. "Rent" includes charges for utility and sewer hookups, equipment, (such as rollaway beds, cribs and television sets, and similar items), and in-room services (such as movies and other services not subject to California taxes), valued in money, whether received or to be received in money, goods, labor, or otherwise. "Rent" includes all receipts, cash, credits, property, and services of any kind or nature without any deduction therefrom.

"Successor to Operator" means any person who acquires the right to operate a hotel, recreational vehicle park, or campground from a predecessor Operator, directly or indirectly, by whatever means, including purchase, foreclosure, operation of lease, or other means. A transfer of an ownership or management interest in a hotel, recreational vehicle park, or campground wherein the facility continues to operate as such, either continuously or for business interruption not exceeding thirty days, shall constitute a succession for purposes of this division.

"Transient" means any Person who exercises Occupancy, or is entitled to Occupancy, by reason of concession, permit, right of access, license, or other agreement for a period of less than one (1) month. A month is defined as the period of consecutive days from the first calendar day of Occupancy in any month to the same calendar day in the next month following, or the last day of the next month following if no corresponding calendar day exists.

### Section 35.0103 Tax Imposed

For the privilege of Occupancy in any Hotel located in The City of San Diego, each Transient is subject to and shall pay a tax in the amount of six percent (6%) of the Rent charged by the Operator.

## BALLOT MEASURE (continued)

### Section 35.0104 Additional Tax Imposed

Notwithstanding the tax imposed by Section 35.0103 and in addition thereto, commencing on January 1, 1985 for the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the Rent charged by the Operator.

### Section 35.0105 Additional Tax Imposed

Notwithstanding the tax imposed by Sections 35.0103 or 35.0104 and in addition thereto, commencing on August 1, 1988 for the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the Rent charged by the Operator.

### Section 35.0106 Additional Tax Imposed

Notwithstanding the tax imposed by Sections 35.0103, 35.0104 or 35.0105 and in addition thereto, commencing on June 1, 1989, for the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the Rent charged by the Operator.

### Section 35.0107 Recreational Vehicle Park and Campground User Tax Imposed

Commencing on September 1, 1990, for the privilege of Occupancy in any Recreational Vehicle Park or Campground, each Transient is subject to and shall pay a tax in the amount of nine percent (9%) of the Rent charged by the Operator.

### Section 35.0108 Additional Tax Imposed

Notwithstanding the tax imposed by Sections 35.0103, 35.0104, 35.0105, 35.0106, or 35.0107 and in addition thereto, commencing on August 1, 1994, for the privilege of Occupancy in any Hotel, any Recreational Vehicle Park, or any Campground, each Transient is subject to and shall pay an additional tax in the amount of one and one half percent (1.5%) of the Rent charged by the Operator.

### Section 35.0110 Tax as Debt; Time and Manner of Payment

- (a) Any tax imposed pursuant to Chapter 3, Article 5, Division 1, constitutes a debt owed by each Transient to the City which is extinguished only by payment to the Operator or to the City.
- (b) Each Transient shall pay any tax imposed pursuant to Chapter 3, Article 5, Division 1, to the Operator of the Hotel, the Recreational Vehicle Park, or the Campground at the time Rent is paid.
- (c) If Rent is paid in installments, a proportionate share of the tax shall be paid by each Transient with each installment.
- (d) The unpaid tax shall be due upon each Transient's ceasing to occupy a room, or portions thereof, in a Hotel, or space in a Recreational Vehicle Park or a Campground.
- (e) If for any reason the tax due is not paid by the Transient to the Operator of the Hotel, the Recreational Vehicle Park, or the Campground, the City Treasurer may require that the tax be paid directly to the City Treasurer.

### Section 35.0111 Exemptions

- (a) No tax shall be due or collected pursuant to Chapter 3, Article 5, Division 1, in the following cases:
  - (1) when the Transient has exercised Occupancy or was entitled to Occupancy for one month or more;
  - (2) when the total space rental charge at a Campground or Recreational Vehicle Park or the room rental charge in a Hotel is twenty-five dollars (\$25.00) a day or less or the accommodations rented are in a dormitory and the total Rent for each Transient is twenty-five dollars (\$25.00) a day or less; or
  - (3) when the Transient is by treaty, or federal law, or state law exempt from payment of transient occupancy taxes; or
  - (4) when Hotel Rents are directly paid by the United States Government or the State of California or their respective instrumentalities. This exemption does not exempt

## BALLOT MEASURE (continued)

a transient who is employed by an exempt entity from payment of the tax when the payment is later to be reimbursed by the entity.

- (b) Any Person who occupies a room, or any portion thereof, in a Hotel, or space in a Recreational Vehicle Park or Campground, or is entitled to Occupancy thereof, for a period of one (1) month or more, shall be deemed not to have been a Transient with respect to the first month of Occupancy or entitlement to Occupancy.

### Section 35.0112 Operator's Duties and Accounting Procedures

- (a) Each Operator shall collect the tax imposed by Chapter 3, Article 5, Division 1, to the same extent and at the same time as the Rent is collected from every Transient.
- (b) If an Operator collects the Rent but fails to collect the tax imposed by Chapter 3, Article 5, Division 1, for any reason, the City shall require the Operator to pay the tax.
- (c) The amount of tax charged each Transient shall be separately stated from the amount of Rent charged, and each Transient shall receive a receipt for payment from the Operator.
- (d) A duplicate of the receipt given to each Transient shall be kept by the Operator in accordance with Section 35.0121.
- (e) No Operator of a Hotel, a Recreational Vehicle Park, or a Campground shall advertise or state in any manner, whether directly or indirectly, that the tax charged pursuant to Chapter 3, Article 5, Division 1, or any part thereof, will be assumed or absorbed by the Operator or that it will not be added to the Rent, or that, if added, any part will be refunded except in the manner hereinafter provided.
- (f) Each Operator shall account separately for, and maintain separate monthly summary totals for taxable and nontaxable Rents and for taxes collected.
- (g) Each Operator shall maintain its financial and accounting records in accordance with established accounting principles acceptable to the City Treasurer.
- (h) The costs of additional goods and services, which are not Rent, but which may be sold as a package, or are complimentary with a room, or portion thereof, in a Hotel, or a space in a Recreational Vehicle Park or Campground (such as golf, tennis, meals), shall be accounted for in accordance with any administrative rules and regulations promulgated by the City Treasurer.

### Section 35.0113 Registration

- (a) Within thirty (30) days after the effective date of this Article, or within thirty (30) days after commencing business, whichever is later, each operator renting occupancy to transients shall register with the City Treasurer and obtain a "Transient Occupancy Registration Certificate" to be posted at all times in a conspicuous place on the premises. Said certificate shall include the following:
  - (1) The name of the operator;
  - (2) The address;
  - (3) The date upon which the certificate was issued;
  - (4) The following statement: "This Transient Occupancy Registration certificate signifies that the person named on the face hereof is required to collect a transient occupancy tax from transients and to remit the same to the City Treasurer and has fulfilled the requirements of the Transient Occupancy Tax Ordinance by registering with the City Treasurer for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the City Treasurer. This certificate does not constitute a permit to operate a hotel, recreational vehicle park or campground business."

## BALLOT MEASURE (continued)

- (b) It shall be unlawful to operate a hotel, recreational vehicle park or campground without a Transient Occupancy Tax Certificate or to fail to post the certificate in a conspicuous place at all times.

### Section 35.0114 Remitting and Reporting

- (a) Each Operator shall remit monthly the full amount of taxes collected for the previous month with the appropriate approved return form available from the City Treasurer.
- (b) Returns and taxes remitted monthly by an Operator and actually received by the City Treasurer on or before the last day of the following month shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 35.0116.
- (c) Returns shall be made by each Operator on a calendar month basis unless a reporting basis other than a calendar month reporting period is approved. An Operator that desires to utilize a reporting period other than a calendar month reporting period must request and obtain written approval from the City Treasurer prior to the implementation of such reporting plan.
- (d) Each Operator reporting on a calendar month basis shall submit, on or before the last day of the following month, a return on the appropriate approved forms to the City Treasurer of the total taxable Rents charged and the amount of tax collected for the previous month and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due shall be remitted to the City Treasurer.
- (e) Each Operator reporting on an approved basis other than a calendar month basis shall submit, on or before the same day of the next month following the close of such reporting period, or on the last day of that month if no corresponding calendar day exists, a return on the appropriate approved forms to the City Treasurer of the total taxable Rents charged and the amount of tax collected for the month and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due shall be remitted to the City Treasurer.
- (f) Returns filed and taxes remitted by mail shall be deemed timely filed only if the envelope or similar container enclosing the returns and taxes is addressed to the City Treasurer, has sufficient postage, and bears a United States postmark or a postage meter imprint prior to midnight on the last day for reporting and remitting without penalty. If the envelope or other container bears a postage meter imprint as well as a United States Post Office cancellation mark, the latter shall govern in determining whether the filing and remittance are timely.
- (g) All taxes collected by an Operator pursuant to Chapter 3, Article 5, Division 1, shall be held in trust for the account of the City until payment thereof is made to the City Treasurer.
- (h) All returns and payments submitted by each Operator shall be treated as confidential by the City Treasurer and shall not be released except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of California, the County of San Diego, or the City of San Diego for official use only.
- (i) The same basis for accounting used by an Operator for keeping books and records shall be used for reporting and remitting.

### Section 35.0115 Remitting and Reporting Requirements upon Cessation of Business

- (a) An operator who is transferring, selling or terminating its business shall notify the City Treasurer in writing of such sale, transfer or termination and the name and address of the purchaser or transferee at least thirty (30) days in advance of the date of transfer, sale or termination, unless the decision to sell, transfer or terminate was made within less than a thirty (30) day period prior to the transfer, sale or termination, in which case the operator shall then immediately notify the City Treasurer.

### BALLOT MEASURE (continued)

The operator shall, at the same time, notify the purchaser or transferee of their responsibility for unpaid collected taxes as set forth in sections 35.0137 and 35.0138, and further certify in writing to the City Treasurer that the transferee or purchaser was notified of the requirements of this Article regarding its responsibility for unpaid collected taxes.

- (b) Cessation of Business. Each operator upon cessation of business for any reason shall, on or before the same day of the next month following the cessation of business or on the last day of that month if no corresponding day exists, make a return to the City Treasurer on approved forms of the total taxable rents charged, the amount of tax collected for the reporting period, remittances made, if any, and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due, if any, shall be remitted to the City Treasurer. After filing the final return and remitting the balance due, the operator shall make his records of account available for a closeout audit by the City Treasurer or duly authorized City employee. Returns filed and taxes remitted and actually received by the City Treasurer on or before the same day of the next month following the cessation of business or on the last day of that month if no corresponding calendar day exists shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 35.0116.
- (c) The liability of the transferee or purchaser for transient occupancy taxes collected by the transferor or seller is set forth in sections 35.0137 and 35.0138.
- (d) Any operator who fails to comply with the provisions of subsections (a) or (b) hereunder is guilty of a misdemeanor.

#### Section 35.0116 Penalties

- (a) Delinquency. Any operator who fails to remit any tax imposed by this Article within the time required shall pay a penalty computed at the rate of one percent (1%) for the first day of delinquency and one-third of one percent (1/3 of 1%) for each day thereafter, including Saturdays, Sundays, and holidays, but not to exceed twenty-five percent (25%) of the amount of the tax due and payable for the entire reporting period in addition to the amount of the tax.
- (b) Fraud. If the City Treasurer determines that the nonpayment of any remittance due under this ordinance is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraph (a) of this section.
- (c) Audit Deficiency. If, upon audit by the City, an operator is found to be deficient in either its return or its remittance or both, the City Treasurer shall immediately invoice the operator for the amount of the net deficiency plus a penalty of ten percent (10%) of the net deficiency. If the operator fails or refuses to pay the deficient amount and applicable penalties within fourteen (14) days of the date of the City Treasurer's invoice, an additional penalty shall be imposed at the rate of one-third of one percent (1/3 of 1%) per day of the net deficiency, not to exceed fifteen percent (15%) for a combined total penalty not to exceed twenty-five percent (25%) of the net deficiency.

#### Section 35.0117 Failure to Collect or Report Tax- Jeopardy Determination

- (a) Determination of Tax by City Treasurer. If any operator shall fail or refuse to collect the tax or to make, within the time provided in this Article, any report or remittance of said tax or any portion hereof required by this Article or if such operator maintains records which are inadequate to show the amount of tax due, the City Treasurer shall forthwith assess the tax and penalties provided for by this Article against the operator.
- (b) Jeopardy Determinations. When an operator fails or refuses to make or file a timely return or remittance of taxes, or when the City Treasurer or duly authorized employee makes a determination, after having applied necessary and accepted auditing procedures or by estimation if no records are available, that an operator is or will be unable to remit any taxes collected or otherwise due at the prescribed time, the City Treasurer may

## BALLOT MEASURE (continued)

make a written Jeopardy Determination which shall be issued to the operator to require the operator to thereafter furnish additional information or provide adequate security as necessary to ensure collection of any taxes due or to become due, and to remit the taxes on a daily or weekly basis. The operator shall thereafter report and remit all taxes due under the terms and conditions prescribed by the City Treasurer. The City Treasurer shall cancel the requirements imposed under the Jeopardy Determination once timely accounting and remittance procedures have been established and the operator is satisfying all obligations imposed by law for the remittance of taxes.

- (c) Notice. The City Treasurer shall deliver notice of the assessment or of the Jeopardy Determination to the operator or deposit it in the United States mail, postage prepaid, addressed to the operator at the last known place of business.

### Section 35.0118 Administrative Remedies and Appeals

- (a) The operator may within fourteen (14) days after the serving or mailing of such notice make application in writing to the City Treasurer for a hearing on the amount assessed pursuant to section 35.0117. If timely application for a hearing is not made, the tax and penalties determined by the City Treasurer shall become final and conclusive and immediately due and payable. If such application is made, the City Treasurer shall give not less than five (5) days written notice in the manner prescribed herein to the operator of the time and place for a hearing before a board consisting of the City Treasurer, the City Auditor and Comptroller and the Financial Management Director or the duly appointed deputy of each. At the hearing, the operator may appear and offer evidence why the specified tax and penalties should not be so fixed. The board shall consider all evidence produced and shall determine the proper tax to be remitted. After the hearing, the City Treasurer shall give written notice to the operator in the manner prescribed herein of the determination and the amount of such tax and penalties. If the amount remaining in dispute thereafter does not exceed \$750.00, the decision of the hearing board shall be final and conclusive and shall constitute the exhaustion of the operator's administrative remedies. Any amount found to be due shall be payable within fourteen (14) days of the serving or mailing of the determination of the tax due unless a further appeal is filed with the City Manager as provided in this section within that fourteen (14) day period for any amount in excess of \$750.00.
- (b) When an appeal from the hearing board for remaining taxes and penalties exceeding \$750.00 is filed, the City Manager shall cause the appeal to be assigned to a Hearing Officer, who shall schedule a hearing to be heard within a reasonable time thereafter. The Hearing Officer shall be appointed by the City Manager, shall be a member of the California State Bar and shall not be a City employee. The Hearing Officer shall be compensated by The City of San Diego for the time spent on deciding an appeal.
- (c) The appellant and the City Manager or designate shall each have the right to appear in person and be represented by legal counsel, to receive notice, to present evidence, to call and cross-examine witnesses under oath and to present argument. The Hearing Officer shall have the power to compel attendance of witnesses and documents by Subpoena in accordance with the Civil Code. The formal rules of evidence shall not apply and any relevant evidence that is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious business affairs shall be admissible. Hearsay evidence may be considered by the Hearing Officer, but no findings may be based solely on hearsay evidence unless supported or corroborated by other relevant and competent evidence. The formal exceptions to the hearsay rule shall apply.
- (d) The Hearing Officer is authorized to rule upon issues of law or fact and to determine the amount of the tax or penalty in accordance with this Article. The Hearing Officer shall not have any jurisdiction to waive, mitigate or suspend the collection of any tax or penalty found to be duly imposed.

## BALLOT MEASURE (continued)

- (e) The decision of the Hearing Officer shall be issued in writing no later than fourteen (14) days after the conclusion of the hearing. The decision shall be the final administrative remedy of the appellant and shall be binding upon the City Manager. Any amounts due shall be immediately payable to the City Treasurer.
- (f) The City Manager shall promulgate supplementary rules and procedures for the conduct of the hearing, the forms of notice and proceedings and the preparation and submission of the record.

### Section 35.0121 Records

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this Article to keep and preserve, for a period of three years within the boundaries of this City, all business records as may be necessary to determine the amount of such tax for which the operator is liable for collection and payment to the City. The City Treasurer and authorized deputies or agents in the exercise of duties imposed by this Article shall have the right to inspect such records at all reasonable times and to apply auditing procedures necessary to determine the amount of tax due to the City. It shall be unlawful to refuse to allow or to permit such audit to be conducted after a lawful demand therefor by the City Treasurer, or the City Auditor when so requested by the City Treasurer.

### Section 35.0122 Refunds

- (a) Whenever the amount of any tax or penalty has been overpaid, paid more than once or has been erroneously or illegally collected or erroneously received by the City under this article, the overpayment may be refunded provided a claim in writing under penalty of perjury stating the specific grounds upon which the claim is founded is filed with the City Treasurer within three years of the date of payment. The claim shall be on forms available from the City Treasurer.
- (b) An operator may claim a refund or take as a credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the City Treasurer that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.
- (c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subparagraph (a) of this section, but only when the transient having paid the tax to the operator establishes to the satisfaction of the City Treasurer that the transient has been unable to obtain a refund from the operator who collected the tax.
- (d) An operator who has remitted an amount in excess of the amount required to be paid by this article may receive a credit to the extent of the excess. If the excess is discovered as a result of an audit by the City, no claim need be filed by the operator. Such credit, if approved by the Treasurer, shall be applied to any deficiency found or any further tax payments due under the rules prescribed by the Treasurer.
- (e) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

### Section 35.0123 Actions to Collect Taxes and Enforcement of Liens

- (a) Any tax required to be paid by any transient under the provisions of this Article shall be deemed a debt owed by the transient to the City and payable through the operator. Any tax collected by an operator which has not been paid to the City shall be deemed funds held in trust for the account of the City which are due and payable by the operator to the City pursuant to the provisions of this Article. Any person owing money to the City under the provisions of the Article shall be liable to an action brought in the name of The City of San Diego for the recovery of such amount. Upon the concurrence of the City Attorney and the City Auditor and Comptroller, the City Treasurer is authorized to

## BALLOT MEASURE (continued)

compromise the collection of the amount or establish a schedule of payment for any tax due, or to discontinue the collection of any claim if it appears that further proceedings would be without merit.

- (b) **Recording of a Certificate of Lien.** If any amount required to be paid to the City under this Article is not paid when due, the City Treasurer may record in the office of the San Diego County Recorder a certificate which specifies the amount of tax and penalties due, the name and address of the operator liable for the same; a statement that the City Treasurer has complied with all provisions of this Article in the determination of the amount required to be paid and a legal description of the real property owned by the operator. From the time of the recording of the certificate, the amount required to be paid together with penalties constitutes a lien upon all real property in the county owned by the operator or thereafter acquired before the lien expires. The lien has the force, effect and priority of a tax lien and shall continue for ten (10) years from the filing of the certificate unless sooner released or otherwise discharged.
- (c) **Warrant for Collection of Tax.** At any time within three (3) years after the recording of a certificate of lien under Section 35.0123(b), the City Treasurer may issue a warrant directed to any sheriff or marshal for the enforcement of the lien and the collection of any tax and penalties required to be paid to the City under this Article. The warrant shall have the same effect as a writ of execution, and be executed in the same manner and with the same effect as a levy and sale pursuant to a writ of execution. The City Treasurer may pay or advance to the sheriff or marshal such fees, commissions and expenses for services as are provided by law for similar services pursuant to a writ of execution.
- (d) **Seizure and Sale.** In lieu of issuing a warrant under subsection (c), at any time within the three (3) years after an assessment was issued or a certificate of lien was recorded under section 35.0123(b), the City Treasurer may collect the delinquent amount by seizing or causing to be seized any property, real or personal, of the operator and sell any noncash or nonnegotiable property or a sufficient part of it at public auction to pay the amount of tax due together with any penalties and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall only be of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.

### Section 35.0124. Violations and Criminal Proceedings

- (a) Any operator who wilfully fails to collect or cause to be collected the transient occupancy tax due from a transient is guilty of misdemeanor.
- (b) Any operator who wilfully fails to file or cause to be filed any return required by this Article, or who files or causes to be filed a false return, or who wilfully fails or refuses to remit or cause to be permitted any tax collected, or who refuses to allow an audit to be conducted, is guilty of a misdemeanor.
- (c) The commencement of criminal proceedings shall neither preclude nor abate administrative or civil actions to collect taxes due under this Article.
- (d) Violations under this section are continuing violations and each day the violation continues constitutes a separate misdemeanor.
- (e) Any operator violating any of the other mandatory provisions of this Article shall be guilty of a misdemeanor.
- (f) Violations shall be punishable as misdemeanors by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the County jail for a period of not more than six (6) months or by both such fine and imprisonment.
- (g) Non-defense. It shall not be a defense to violations of this Article that the operator, including a resident manager, had forwarded any return due or tax collected to its



## BALLOT MEASURE (continued)

principal or corporate headquarters, nor that any failure to file or remit taxes was based on the direction or inaction of such principal or corporate headquarters.

### Section 35.0127 Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Article or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

### Section 35.0128 Utilization of Revenues from Tax Imposed by Section 35.0103

All revenues collected pursuant to the tax imposed by the City under Section 35.0103 shall be utilized as follows:

- (a) Two-thirds (2/3) of all revenues collected by the City and remaining after payment of two-thirds (2/3) of the costs incurred in the administration of Chapter 3, Article 5, Division 1 shall be deposited in the Transient Occupancy Tax Fund and used solely for the purpose of promoting the City. However, if the City Manager determines that anticipated revenues in any fiscal year will be insufficient to maintain existing City services, the City Manager may ask the City Council to temporarily suspend compliance with this subsection (a) for the upcoming fiscal year. A majority vote of the City Council can temporarily suspend compliance with this subsection (a) for that fiscal year.
- (b) One-sixth (1/6) of all revenue collected by the City and remaining after payment of one-sixth (1/6) of the costs incurred in the administration of Chapter 3, Article 5, Division 1 shall be deposited in the Transient Occupancy Tax Fund. Money shall be expended from this fund only by an ordinance appropriating part or all of the fund for any purpose the City Council may direct, including, but not limited to, promotion of the City.
- (c) One-sixth (1/6) of all revenue collected by the City and remaining after payment of one-sixth (1/6) of the costs incurred in the administration of Chapter 3, Article 5, Division 1 shall be deposited to the General Fund. An annual allocation, as determined by the City Council, from revenues collected pursuant to the tax imposed by the City under Section 35.0103 may be deposited in the Housing Trust Fund of the City.

### Section 35.0129 Utilization of Revenues from Additional Tax Imposed by Section 35.0104

All revenues collected pursuant to the tax imposed by the City under Section 35.0104 shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.

### Section 35.0130 Utilization of Revenues from Additional Tax Imposed by Section 35.0105

All revenues collected pursuant to the tax imposed by the City under Section 35.0105 shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.

### Section 35.0131 Utilization of Revenues from Additional Tax Imposed by Section 35.0106

All revenues collected pursuant to the tax imposed by the City under Section 35.0106 shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.

### Section 35.0132 Utilization of Revenues From Tax Imposed by Section 35.0107

All revenues collected pursuant to the tax imposed by the City under Section 35.0107 shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.

## BALLOT MEASURE (continued)

### **Section 35.0133 Utilization of Revenues From Tax Imposed by Section 35.0108**

All revenues collected pursuant to the tax imposed by the City under Section 35.0108 shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.

### **Section 35.0136 Treasurer's Regulations and Enforcement Authority**

The City Treasurer may promulgate reasonable rules, interpretations and regulations to implement and enforce the provisions of this Article. Designated agents of the City Treasurer shall have the authority to arrest without a warrant any violator of a misdemeanor provision of this Article and to issue notices to appear pursuant to the provisions of Penal Code section 836.5.

### **Section 35.0137 Duty of Successor of Operator**

If an operator who is liable for any tax or penalties under this Article sells or otherwise disposes of his business, his successor shall notify the City Treasurer of the date of sale at least thirty (30) days before the date of sale or, if the decision to sell was made less than thirty (30) days prior to the actual sale, then immediately and shall withhold a sufficient portion of the purchase price to equal the amount of such tax or penalty until the selling operator produces a receipt from the Treasurer showing that the tax or penalty has been paid or a tax clearance certificate from the City Treasurer stating that no tax or penalty is due. If the seller does not present a receipt or tax clearance certificate within thirty (30) days after such successor commences to conduct business, the successor shall deposit the withheld amount with the City Treasurer pending settlement of the account of the seller.

### **Section 35.0138 Liability of Successor for Failure to Withhold: Notice of Amount Due**

If the successor to the business fails to withhold a portion of the purchase price as required, it shall be liable to the City for the payment of the amount required to be withheld. Within thirty (30) days after receiving a written request from the successor for a tax clearance certificate stating that no tax or penalty is due, the City Treasurer shall either issue the certificate or mail notice to the successor at its address as it appears on the records of the City Treasurer of the estimated amount of the tax and penalty that must be paid as a condition of issuing the certificate.

### **Division 25 of Article 1 of Chapter 6 of the San Diego Municipal Code, San Diego Tourism Marketing District Procedural Ordinance**

#### **Section 61.2501 Purpose and Intent**

The purpose and intent of this Division is:

- (a) To allow for the establishment of a tourism marketing district to provide for tourism development, including coordinated joint marketing and promotion of San Diego businesses, in order to retain and expand the lodging industry which is one of the top revenue generators for the San Diego economy and a key employment sector.
- (b) To create a mechanism to fund promotional activities for tourism development through the levy of assessments upon the businesses to which the special and specific benefit from those activities is conferred.
- (c) To provide a method for the involvement of a nonprofit entity to participate in the preparation and review of proposed tourism marketing district plans for district activities.
- (d) To provide a method for the City Council to authorize a nonprofit entity with specific interest in the promotion of City tourism to implement and administer district activities.
- (e) To provide a mechanism with which a charge may be imposed for a special and specific benefit conferred directly to the payors that is not provided to those not charged and which does not exceed the reasonable costs to the City of San Diego of conferring the benefit.

#### **Section 61.2502 Citation of Division**

This division may be cited as the San Diego Tourism Marketing District Procedural Ordinance.

## BALLOT MEASURE (continued)

### Section 61.2503 Rules of Construction

This Division shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality and no neglect or omission of any officer, in any procedure taken under this Division which does not directly affect the jurisdiction of the San Diego City Council to order the work shall void or invalidate such procedure for any assessment or the cost of the work done thereunder.

### Section 61.2504 Definitions

For purposes of this division, defined terms appear in italics. The following definitions apply in this Division: "Activities" means, but is not limited to, the promotion and marketing of assessed businesses to provide a special and specific benefit to assessed businesses within the district that is not provided to those not paying the assessment.

"Assessment" means a levy for the purpose of conducting activities which will provide a special and specific benefit to the assessed businesses located within a tourism marketing district is not provided to those not paying the assessment. Assessments levied under this Division are not special taxes.

"Business" means any and all types of hotels where a structure, or any portion of a structure, is held out to the public as being occupied, or designed for occupancy, by transients for dwelling, lodging or sleeping purposes.

"Business owner" means the owner, operator, or authorized representative of the business who is noted on City records as the responsible party for the remitting and reporting of Transient Occupancy Tax pursuant to San Diego Municipal Code section 35.0114.

"District management plan" or "plan" means a proposal as defined in sections 61.2507.

"Tourism marketing district," or "district," means an area established pursuant to this Division, within which businesses pay assessments to fund activities.

"Tourism marketing district association" or "association" means a private nonprofit entity which represents, and whose membership includes only the assessed business owners or business owners' representatives in a district and which participates in the preparation and review of proposed district management plans for district activities that provide a special and specific benefit to assessed businesses that is not provided to those that are not assessed. A tourism marketing district association may be an existing nonprofit entity or a newly formed nonprofit entity. In accordance with California Streets and Highways Code section 36614.5, the association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose.

"Transient" has the same meaning as in San Diego Municipal Code section 35.0102.

### Section 61.2505 Alternative Financing Method; No Limit on Other Provisions of Law

This Division provides an alternative method of financing certain activities. The provisions of this Division shall not affect or limit any other provisions of law authorizing or providing for activities or the raising of revenue for the benefit of businesses.

### Section 61.2506 Establishment of Tourism Marketing District

A tourism marketing district may be established as provided in this Division, in the following manner:

- (a) Upon the submission of a written petition, signed by the business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the City Council will initiate proceedings to establish a district by the adoption of a resolution expressing its intention to establish a district. Where the same business owner would be assessed an amount in excess of 40 percent of the total amount of all assessments proposed to be levied, that business owner's share of the assessment over such 40 percent shall not be included in determining whether the petition is signed by business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.
- (b) The petition of business owners required under subdivision (a) shall include a summary of the district management plan. That summary shall include all of the following:
  - (1) A map showing the boundaries of the district.

### BALLOT MEASURE (continued)

- (2) Information specifying where the complete district management plan can be obtained.
- (3) Information specifying that the complete district management plan shall be furnished upon request.
- (c) The resolution of intention described in subdivision (a) shall contain all of the following:
  - (1) A brief description of the proposed activities, the amount of the proposed assessment, a statement that bonds will not be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the activities and the location and extent of the proposed district.
  - (2) A time and place for a public hearing on the establishment of the tourism marketing district and the levying of assessments, which shall be consistent with the requirements of section 61.2508.

#### Section 61.2507 Tourism Marketing District Management Plan

The district management plan shall contain all of the following:

- (a) A map of the district.
- (b) The name of the proposed district.
- (c) A description of the boundaries of the district, including the boundaries of any benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected lands and businesses included. Nothing in this Division prohibits the boundaries of a district created pursuant to this Division to overlap with other districts created pursuant to this Division or assessment districts established pursuant to other provisions of law including, but not limited to, the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code sections 36500 - 36551, or the Property and Business Improvement District Law of 1994, California Streets and Highways Code sections 36600 - 36671.
- (d) The general description of activities proposed for each year of operation of the district and the estimated maximum cost thereof.
- (e) The estimated total annual amount proposed to be expended each year for administration and operation of the district.
- (f) The proposed source or sources of financing including the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to calculate the amount of the assessment to be levied against their business.
- (g) The planned frequency for the levying of the assessments.
- (h) The specific number of years in which assessments will be levied. The maximum term for any district is 40 years. The district management plan may set forth specific changes in assessments for each year of operation of the district.
- (i) The proposed timing and duration of activities under the plan.
- (j) Any proposed rules and regulations to be applicable to the district.
- (k) A list of the businesses to be assessed then in existence.
- (l) A description of the procedures utilized by the association for the nomination and election of the association's board of directors.
- (m) Any other item or matter required to be incorporated therein by the San Diego City Council, the San Diego Municipal Code, or any other applicable law. The district management plan shall be approved by City Council at the time City Council considers the petition of businesses seeking to establish a tourism marketing district. Should the

## BALLOT MEASURE (continued)

businesses or the tourism marketing district association seek to modify the plan at any time, such modifications shall be subject to the requirements of sections 61.2519 and 61.2520.

### Section 61.2508 Notice of Proposed Assessments; Public Hearing

(a) If the City Council proposes to levy a new or increased assessment pursuant to this Division, the City shall comply with the following notice, protest, and hearing procedures:

- (1) The City Council shall identify all businesses which will have a special and specific benefit conferred on them by the activities and upon which an assessment will be imposed.
- (2) All assessments shall be supported by the management plan.
- (3) The City shall give notice by mail to the business owner of each identified business. Each notice shall state the estimated total initial annual assessments for the entire district, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, and a specific formula in sufficient detail to allow the business owner to calculate the proposed assessment on the business, together with the date, time and location of a public hearing on the proposed assessment.

(4) If the proposed assessment formula is based on gross room revenue, the amount of the proposed assessment for each identified business shall be estimated based on gross room rental revenue for the City's most recent complete fiscal year.

(5) Each notice shall also include, in a conspicuous place, a summary of the procedures for the completion, return, and tabulation of the ballots required pursuant to section 61.2508(a)(6), including a statement that the assessment shall not be imposed if the ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment, with ballots weighted according to the proportional financial obligation of the affected business.

The City shall give notice by mail at least 45 days prior to the date of the public hearing upon the proposed assessment. On the face of the envelope mailed to the business owner, in which the notice and ballot are enclosed, there shall appear in substantially the following form in no smaller than 16-point bold type: "OFFICIAL BALLOT ENCLOSED". The City may additionally place the phrase "OFFICIAL BALLOT ENCLOSED" on the face of the envelope mailed to the business owner, in which the notice and ballot are enclosed, in a language or languages other than English.

(6) Each notice given pursuant to this section shall contain a ballot that includes the City's address for receipt of the ballot and a place where the person returning the assessment ballot may indicate his or her name, a reasonable identification of the business, and his or her support or opposition to the proposed assessment. Each ballot shall be in a form that conceals its contents once it is sealed by the person submitting the ballot. Each ballot shall be signed and either mailed or otherwise delivered to the address indicated on the ballot. Regardless of the method of delivery, all ballots shall be received at the address indicated, or the site of the public testimony, in order to be included in the tabulation of a majority protest pursuant to section 61.2508(a)(8). Ballots shall remain sealed until the tabulation of ballots pursuant to section 61.2508(a)(8) commences, provided that a ballot may be submitted, changed, or withdrawn by the person who submitted the ballot prior to the conclusion of the public testimony on the proposed assessment at the hearing required pursuant to this section. The City may provide an envelope for the return of the ballot, provided that if the return envelope is opened by the City prior to the tabulation of ballots pursuant to section 61.2508(a)(8), the enclosed ballot shall remain sealed as provided in this section.

### BALLOT MEASURE (continued)

- (7) At the time, date, and place stated in the notice mailed pursuant to section 61.2508(a)(3), the City shall conduct a public hearing upon the proposed assessment. At the public hearing, the City shall consider all objections or protests, if any, to the proposed assessment. At the public hearing, any person shall be permitted to present written or oral testimony. The public hearing may be continued from time to time.
  - (8) At the conclusion of the public hearing, a person or persons designated by the City shall tabulate the ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment.
  - (9) The City Council may, if necessary, continue the tabulation at a different time or location accessible to the public, provided the City Council announces the time and location at the hearing. Technological methods may be used in the tabulation of the ballots, including, but not limited to, punchcard, or optically readable (bar-coded) ballots.
  - (10) A majority protest exists if the ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the ballots submitted, and not withdrawn, in its favor, weighting those ballots by the amount of the proposed assessment to be imposed upon the identified business for which each ballot was submitted.
  - (11) If there is a majority protest against the imposition of a new assessment or an increase in an existing assessment, the City shall not impose or increase the assessment.
- (b) In addition to the requirements of section 61.2508(a), the City shall also comply with California Government Code section 54954.6, as it relates to adopting any new or increased assessment.

#### **Section 61.2509 City Council Adoption, Revision or Modification of Assessments; Modification of Approved Activities; Changes to District Boundaries**

At the conclusion of the public hearing to establish the district, the City Council may adopt, revise, change, reduce or modify the proposed assessment or the type or types of activities to be funded with the revenues from the assessments. At the hearing, the City Council may only make changes to the boundaries of the proposed tourism marketing district that will exclude territory containing businesses that the City Council finds will not benefit from the proposed activities; and may only change proposed assessments by reducing them.

#### **Section 61.2510 Resolution of Formation of Tourism Marketing District**

- (a) If the City Council, following a public hearing, decides to establish a proposed tourism marketing district, the City Council shall adopt a resolution of formation that shall contain all of the following:
  - (1) A brief description of the proposed activities, the amount of the proposed assessment, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the activities and the location and extent of the proposed district.
  - (2) The number, date of adoption, and title of the resolution of intention.
  - (3) The time and place where the public hearing was held concerning the establishment of the district.
  - (4) A determination regarding any protests received. The City Council shall not establish the district or levy assessments if a majority protest was received.
  - (5) A statement that the operations of the district established by the resolution shall be subject to any amendments to this Division.
  - (6) A statement that the activities to be provided to benefit businesses in the district will be funded by the levy of the assessments. The revenue from the levy of

## BALLOT MEASURE (continued)

assessments within a district shall not be used to provide activities that directly benefit businesses outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the City Council at the hearing concerning establishment of the district.

- (7) A statement specifying the time and manner for levying the assessments by the City Treasurer.
  - (8) A statement that any assessment imposed pursuant to this Division is levied solely upon the business owner within the district; that the business owner is solely responsible for payment of the assessment when due, and that, if the business owner chooses to collect any portion of the assessment from a transient, that portion shall be specifically called out and identified for the transient in any and all communications from the business owner as a "San Diego Tourism Marketing District Assessment."
  - (9) A finding that the activities funded by the assessments will provide a special and specific benefit to businesses within the tourism marketing district that is not provided to those not paying the assessment.
- (b) The adoption of the resolution of formation and recordation of the notice and map pursuant to section 61.2512 shall constitute the levy of an assessment in each of the fiscal years referred to in the district management plan.

### **Section 61.2511 City Clerk to Record Notice and Map of District**

Following adoption of a resolution establishing a district pursuant to section 61.2510 the City Clerk shall record a notice and map of the district.

### **Section 61.2512 City Council Establishment of Benefit Zones**

The City Council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the activities to be provided within the benefit zone, and may impose a different assessment within each benefit zone. The City Council may also define categories of businesses based upon the degree of benefit that each will derive from the activities to be provided within the district, and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

### **Section 61.2513 Establishment, Modification or Disestablishment, Districts and Benefit Zones**

All provisions of this Division applicable to the establishment, modification, or disestablishment of a tourism marketing district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. In order to establish, modify, or disestablish a benefit zone or category of business, the City Council shall follow the procedure to establish, modify, or disestablish a tourism marketing district.

### **Section 61.2514 Expiration of Tourism Marketing District**

If a tourism marketing district expires due to the time limit set pursuant to section 61.2507(h), a new district management plan may be created and a new district established pursuant to this Division.

### **Section 61.2515 Collection of Assessments**

The collection of the assessments levied pursuant to this Division shall be made at the time and in the manner set forth by the City Council in the resolution establishing the district described in section 61.2510. A method for charging interest and penalties for delinquent payments of assessments may also be prescribed in the resolution establishing the district.

### **Section 61.2516 Exemptions from Assessments**

The following business revenues are considered exempt from assessment under this Division:

- (1) Revenues from a transient who has exercised occupancy for more than one month;
- (2) Revenues from a transient whose room rent is being paid directly or indirectly by the federal government or the State of California, or
- (3) Revenues from a transient who is by treaty exempt from locally-levied transient occupancy taxes.

## BALLOT MEASURE (continued)

### Section 61.2517 Validity of Assessments; Contests

The validity of an assessment levied under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution establishing the district and levying the assessment is adopted pursuant to section 61.2510. Any appeal from a final judgment in an action or proceeding shall be perfected by the appellant within 30 days after the entry of judgment.

### Section 61.2518 City's Promotional Responsibilities

- (a) Nothing in this Division shall relieve the City of its responsibility to promote the City of San Diego as enumerated in San Diego Municipal Code section 35.0128 regarding the use of revenues from the City's Transient Occupancy Tax.
- (b) The City Manager, or the Manager's designee, will provide the tourism marketing district association, on an annual basis, a statement detailing actual Transient Occupancy Tax revenues collected under San Diego Municipal Code section 35.0103 that are available for promoting the City. This statement shall also describe the prescribed use of revenues from the City's Transient Occupancy Tax to include, but not be limited to:
  - (1) The annual debt payment for all existing bond obligations related to the San Diego Convention Center Corporation;
  - (2) The annual marketing subsidy as required by the San Diego Convention Center Corporation; and
  - (3) The annual debt payment for all existing bond obligations relative to Balboa Park and Mission Bay Park.

### Section 61.2519 Modifications of District Management Plan

A tourism marketing district association may, at any time, request that the City Council modify its district management plan. Any modification of the district management plan shall be made pursuant to this Division.

### Section 61.2520 District Plan Modification; Public Hearing Required

- (a) Upon the written request of a tourism marketing district association, the City Council may modify the district management plan, including modification of the activities to be funded with the revenue derived from the levy of the assessments, after conducting one public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the City shall comply with the notice and protest requirements of section 61.2508.
- (b) The City Council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.
- (c) The City shall give all business owners within the district written notice by mail, of the proposed modifications of the district management plan, an explanation of the modification, and the reason for the modification, together with the date, time and location of a public hearing on the proposed modification.

### Section 61.2521 Tourism Marketing District Association; Report of Activities

- (a) Each tourism marketing district association shall cause to be prepared a prospective report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the activities described in the report. The tourism marketing district association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the tourism marketing district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of categories of business, if a classification is used.
- (b) The report shall be filed with the City Clerk prior to the end of each fiscal year, and shall refer to the tourism marketing district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:



### BALLOT MEASURE (continued)

- (1) Any proposed changes to the boundaries of the tourism marketing district or to any benefit zones or classification of businesses within the district.
  - (2) The activities to be provided for that fiscal year.
  - (3) An estimate of the cost of providing the activities for that fiscal year.
  - (4) The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
  - (5) The estimated amount of any surplus or deficit revenues to be carried over from the previous fiscal year.
  - (6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this Division.
- (c) The City Council may approve the report as filed by the tourism marketing district association, D1, may modify any portion of the report and approve it as modified. Such modification shall only be made subject to the noticing provisions of sections 61.2520. Any portion of the report which proposes to modify the district management plan shall only be approved after complying with the notice and public hearing requirements of Section 61.2520. The City Council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments.
- (d) A tourism marketing district association shall comply with the Ralph M. Brown Act, California Government Code sections 54950 - 54963, at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act, California Government Code sections 6250 - 6276.48, for all documents relating to activities of the district.
- (e) Each business owner paying the tourism district assessment has the right to vote in annual elections of the association and the right to seek nomination or election to the board of directors of the association.

#### Section 61.2522 Tourism Marketing District Association; Contract With Nonprofit

The district management plan may state that a tourism marketing district association will provide for and administer the activities described in the district management plan. If the district management plan designates a tourism marketing district association, the City may contract with the designated nonprofit corporation to implement the plan and carry out specified activities, subject to the terms and conditions enumerated in the contract.

#### Section 61.2523 Renewal of Expired District

- (a) Upon renewal of an expired district, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional businesses not included in the prior district, the remaining revenues shall be spent to benefit only the businesses in the prior district. If the renewed district does not include businesses included in the prior district, the remaining revenues attributable to these businesses shall be refunded to the owners of these businesses.
- (b) Upon renewal, a district shall have a term not to exceed forty (40) years. There is no requirement that the boundaries, assessments, or activities of a renewed district be the same as the original or prior district.

#### Section 61.2524 Disestablishment of District; Procedures

- (a) Any tourism marketing district established or extended pursuant to the provisions of this Division, where there is no outstanding and unpaid indebtedness incurred to accomplish any of the purposes of the district, may be disestablished by resolution of the City Council in either of the following circumstances:

## BALLOT MEASURE (continued)

- (1) If the City Council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district; or
- (2) After the first year of operation of the district, there shall be a 30-day period each year in which assessed business owners may request disestablishment of the district. The first such period shall begin upon presentation to City Council of the district's initial annual report of activities. During each successive year of operation of the district, business owners shall have such a 30-day period to request disestablishment upon presentation of the district's report of activities. Upon the written petition of the business owners in the district who pay 50 percent or more of the assessments levied, the City Council shall pass a resolution of intention to disestablish the district. The City Council shall notice a hearing on disestablishment, pursuant to section 61.2508.
  - (b) The City Council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the district. The notice of the hearing on disestablishment required by this section shall be given by mail to the owner of each business subject to assessment in the district. The City Council shall conduct the public hearing not less than 30 days after the mailing of the notice to the business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

### Section 61.2525 Disestablishment; Refund of Assessments

- (a) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund. All outstanding assessment revenue collected after disestablishment shall be spent on activities specified in the district management plan.
- (b) Upon the disestablishment of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, shall be refunded to the business owners then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished.

### Section 61.2526 Action to Determine Validity; Action Contesting Validity

- (a) An action to determine the validity of assessments, contracts, improvements, or activities may be brought by the City or tourism marketing district association pursuant to Chapter 9 (commencing with section 860) of Title 10 of Part 2 of the California Code of Civil Procedure. For such purpose an assessment, activity, improvement, or acquisition shall be deemed to be in existence upon its authorization by City Council.
- (b) In accordance with California Streets and Highways Code section 36633, the validity of an assessment levied under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to section 61.251. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

### The Property and Business Improvement District Law of 1994

#### California Streets and Highways Code

**Section 36600.** This part shall be known and may be cited as the "Property and Business Improvement District Law of 1994."

**Section 36601.** The Legislature finds and declares all of the following:

## BALLOT MEASURE (continued)

mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

- (3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

**Section 36602.** The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

**Section 36603.** Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

**Section 36603.5.** Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

**Section 36604.** This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

**Section 36606.** "Activities" means, but is not limited to, all of the following that benefit businesses or real property in the district:

- (a) Promotion of public events.
- (b) Furnishing of music in any public place.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.

(f) Other services provided for the purpose of conferring special benefit upon assessed businesses and real property located in the district.

**Section 36606.5.** "Assessment" means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

**Section 36607.** "Business" means all types of businesses and includes financial institutions and professions.

**Section 36608.** "City" means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

**Section 36609.** "City council" means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

**Section 36609.4.** "Clerk" means the clerk of the legislative body.

## BALLOT MEASURE (continued)

**Section 36609.5.** "General benefit" means, for purposes of a property-based district, any benefit that is not a "special benefit" as defined in Section 36615.5.

**Section 36610.** "Improvement" means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the area.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

**Section 36611.** "Management district plan" or "plan" means a proposal as defined in Section 36622.

**Section 36612.** "Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners' association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to activities of the district.

**Section 36614.** "Property" means real property situated within a district.

**Section 36614.5.** "Property and business improvement district," or "district," means a property and business improvement district established pursuant to this part.

**Section 36614.6.** "Property-based assessment" means any assessment made pursuant to this part upon real property.

**Section 36614.7.** "Property-based district" means any district in which a city levies a property-based assessment.

**Section 36615.** "Property owner" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. "Business owner" means any person recognized by the city as the owner of the business. "Owner" means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

## BALLOT MEASURE (continued)

**Section 36615.5.** "Special benefit" means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

**Section 36616.** "Tenant" means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

**Section 36617.** This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

**Section 36620.** A property and business improvement district may be established as provided in this chapter.

**Section 36620.5.** A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

**Section 36621.** (a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

- (1) A map showing the boundaries of the district.
- (2) Information specifying where the complete management district plan can be obtained.
- (3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

- (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.
- (2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

## BALLOT MEASURE (continued)

**Section 36622.** The management district plan shall include, but is not limited to, all of the following:

- (a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.
- (b) The name of the proposed district.
- (c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.
- (d) The improvements, maintenance, and activities proposed for each year of operation of the district and the maximum cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities and a statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.
- (e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.
- (f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.
- (g) The time and manner of collecting the assessments.
- (h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.
- (i) The proposed time for implementation and completion of the management district plan.

## BALLOT MEASURE (continued)

- (j) Any proposed rules and regulations to be applicable to the district.
- (k) (1) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.  
(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.
- (l) In a property-based district, the total amount of all special benefits to be conferred upon the properties located within the property-based district.
- (m) In a property-based district, the total amount of general benefits, if any.
- (n) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.
- (o) Any other item or matter required to be incorporated therein by the city council.

**Section 36623.** (a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

- (b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

## BALLOT MEASURE (continued)

- (c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

**Section 36624.** At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

**Section 36625.** (a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

- (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.
- (2) The number, date of adoption, and title of the resolution of intention.
- (3) The time and place where the public hearing was held concerning the establishment of the district.
- (4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.
- (5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.
- (6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district.
- (7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.
- (8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.



## BALLOT MEASURE (continued)

- (b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

**Section 36626.** If the city council, following the public hearing, desires to establish the proposed property and business improvement district, and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in Section 36625.

**Section 36627.** Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625 or Section 36626, the clerk of the city shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

**Section 36628.** The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

**Section 36628.5.** The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

**Section 36629.** All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

**Section 36630.** If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

**Section 36631.** The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

**Section 36632.** (a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

- (b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.
- (c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

## BALLOT MEASURE (continued)

boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

- (1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.
- (2) The improvements, maintenance, and activities to be provided for that fiscal year.
- (3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.
- (4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.
- (5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- (6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

**Section 36651.** The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

**Section 36660.** (a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.

(b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.

(c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

**Section 36670.** (a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:

## BALLOT MEASURE (continued)

- (1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.
  - (2) During the operation of the district, there shall be a 30-day period each year in which assesseses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners or authorized representatives of businesses in the area who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.
- (b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

**Section 36671.** (a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

- (b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

### California Government Code Section 1090

#### Prohibitions Applicable to Specified Officers

#### Section 1090.

- (a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.
- (b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).
- (c) As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

## BALLOT MEASURE (continued)

### California Government Code Sections 54951, 54952, and 54954.2

**Section 54951.** As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

**Section 54952.** As used in this chapter, "legislative body" means:

- (a) The governing body of a local agency or any other local body created by state or federal statute.
- (b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.
- (c)
  - (1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:
    - (A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.
    - (B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.
  - (2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.
- (d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

### Section 54954.2 Agenda; posting; action on other matters; posting on Internet Web site

- (a)
  - (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be

## BALLOT MEASURE (continued)

made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

- (2) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.
- (b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.
  - (1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.
  - (2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).
  - (3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.
- (c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.
- (d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:
  - (1) A legislative body as that term is defined by subdivision (a) of Section 54952.
  - (2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

### **San Diego City Charter Section 221: Sale of Real Property**

Real property owned by The City of San Diego consisting of eighty (80) contiguous acres or more, whether or not in separate parcels, shall not be sold or exchanged unless such sale or exchange shall have first been authorized by ordinance of the Council and thereafter ratified by the electors of The City of San Diego. The foregoing shall not apply to the sale or exchange of real property to a governmental agency for bona fide governmental purposes which sale or exchange was duly authorized by ordinance of the Council, nor shall it apply to properties previously authorized for disposition by the electors of The City of San Diego.

## BALLOT MEASURE (continued)

### Jobs and Economic Improvement Through Environmental Leadership Act of 2011 California Public Resources Code

**Section 21178.** The Legislature finds and declares all of the following:

- (a) The overall unemployment rate in California is 12 percent, and in certain regions of the state that rate exceeds 13 percent.
- (b) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) requires that the environmental impacts of development projects be identified and mitigated.
- (c) The act also guarantees the public an opportunity to review and comment on the environmental impacts of a project and to participate meaningfully in the development of mitigation measures for potentially significant environmental impacts.
- (d) There are large projects under consideration in various regions of the state that would replace old and outmoded facilities with new job-creating facilities to meet those regions' needs while also establishing new, cutting-edge environmental benefits to those regions.
- (e) These projects are privately financed or financed from revenues generated from the projects themselves and do not require taxpayer financing.
- (f) These projects further will generate thousands of full-time jobs during construction and thousands of additional permanent jobs once they are constructed and operating.
- (g) These projects also present an unprecedented opportunity to implement nation-leading innovative measures that will significantly reduce traffic, air quality, and other significant environmental impacts, and fully mitigate the greenhouse gas emissions resulting from passenger vehicle trips attributed to the project.
- (h) These pollution reductions will be the best in the nation compared to other comparable projects in the United States.
- (i) The purpose of this act is to provide unique and unprecedented streamlining benefits under the California Environmental Quality Act for projects that provide the benefits described above for a limited period of time to put people to work as soon as possible.

**Section 21180.** For the purposes of this chapter, the following terms shall have the following meanings:

- (a) "Applicant" means a public or private entity or its affiliates, or a person or entity that undertakes a public works project that proposes a project and its successors, heirs, and assignees.
- (b) "Environmental leadership development project," "leadership project," or "project" means a project as described in Section 21065 that is one of the following:
  - (1) A residential, retail, commercial, sports, cultural, entertainment, or recreational use project that is certified as LEED silver or better by the United States Green Building Council and, where applicable, that achieves a 10-percent greater standard for transportation efficiency than for comparable projects. These projects must be located on an infill site. For a project that is within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect, the infill project shall be consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.
  - (2) A clean renewable energy project that generates electricity exclusively through wind or solar, but not including waste incineration or conversion.

## BALLOT MEASURE (continued)

- (3) A clean energy manufacturing project that manufactures products, equipment, or components used for renewable energy generation, energy efficiency, or for the production of clean alternative fuel vehicles.
- (c) "Transportation efficiency" means the number of vehicle trips by employees, visitors, or customers of the residential, retail, commercial, sports, cultural, entertainment, or recreational use project divided by the total number of employees, visitors, and customers.

**Section 21181.** This chapter does not apply to a project if the Governor does not certify a project as an environmental leadership development project eligible for streamlining provided pursuant to this chapter prior to January 1, 2016.

**Section 21182.** A person proposing to construct a leadership project may apply to the Governor for certification that the leadership project is eligible for streamlining provided by this chapter. The person shall supply evidence and materials that the Governor deems necessary to make a decision on the application. Any evidence or materials shall be made available to the public at least 15 days before the Governor certifies a project pursuant to this chapter.

**Section 21183.** The Governor may certify a leadership project for streamlining pursuant to this chapter if all the following conditions are met:

- (a) The project will result in a minimum investment of one hundred million dollars (\$100,000,000) in California upon completion of construction.
- (b) The project creates high-wage, highly skilled jobs that pay prevailing wages and living wages and provide construction jobs and permanent jobs for Californians, and helps reduce unemployment. For purposes of this subdivision, "jobs that pay prevailing wages" means that all construction workers employed in the execution of the project will receive at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code. If the project is certified for streamlining, the project applicant shall include this requirement in all contracts for the performance of the work.
- (c) The project does not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation, as determined by the State Air Resources Board pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code.
- (d) The project applicant has entered into a binding and enforceable agreement that all mitigation measures required pursuant to this division to certify the project under this chapter shall be conditions of approval of the project, and those conditions will be fully enforceable by the lead agency or another agency designated by the lead agency. In the case of environmental mitigation measures, the applicant agrees, as an ongoing obligation, that those measures will be monitored and enforced by the lead agency for the life of the obligation.
- (e) The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council pursuant to subdivision (f) of Section 21185.
- (f) The project applicant agrees to pay the costs of preparing the administrative record for the project concurrent with review and consideration of the project pursuant to this division, in a form and manner specified by the lead agency for the project.

## BALLOT MEASURE (continued)

**Section 21184.** (a) The Governor may certify a project for streamlining pursuant to this chapter if it complies with the conditions specified in Section 21183.

(b) (1) Prior to certifying a project, the Governor shall make a determination that each of the conditions specified in Section 21183 has been met. These findings are not subject to judicial review.

(2) (A) If the Governor determines that a leadership project is eligible for streamlining pursuant to this chapter, he or she shall submit that determination, and any supporting information, to the Joint Legislative Budget Committee for review and concurrence or nonconcurrence.

(B) Within 30 days of receiving the determination, the Joint Legislative Budget Committee shall concur or nonconcur in writing on the determination.

(C) The Joint Legislative Budget Committee fails to concur or nonconcur on a determination by the Governor within 30 days of the submittal, the leadership project is deemed to be certified.

(c) The Governor may issue guidelines regarding application and certification of projects pursuant to this chapter. Any guidelines issued pursuant to this subdivision are not subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

**Section 21185.** On or before July 1, 2014, the Judicial Council shall adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report for an environmental leadership development project certified by the Governor pursuant to this chapter or the granting of any project approvals that require the actions or proceedings, including any potential appeals therefrom, be resolved, within 270 days of certification of the record of proceedings pursuant to Section 21186.

**Section 21186.** Notwithstanding any other law, the preparation and certification of the administrative record for a leadership project certified by the Governor shall be performed in the following manner:

(a) The lead agency for the project shall prepare the administrative record pursuant to this division concurrently with the administrative process.

(b) All documents and other materials placed in the administrative record shall be posted on, and be downloadable from, an Internet Web site maintained by the lead agency commencing with the date of the release of the draft environmental impact report.

(c) The lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents submitted to, or relied on by, the lead agency in the preparation of the draft environmental impact report.

(d) A document prepared by the lead agency or submitted by the applicant after the date of the release of the draft environmental impact report that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is released or received by the lead agency.

(e) The lead agency shall encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any comment available to the public in a readily accessible electronic format within five days of its receipt.

(f) Within seven business days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.

(g) Notwithstanding paragraphs (b) to (f), inclusive, documents submitted to or relied on by the lead agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. For



## BALLOT MEASURE (continued)

those copyright-protected documents, the lead agency shall make an index of these documents available in an electronic format no later than the date of the release of the draft environmental impact report, or within five business days if the document is received or relied on by the lead agency after the release of the draft environmental impact report. The index must specify the libraries or lead agency offices in which hard copies of the copyrighted materials are available for public review.

- (h) The lead agency shall certify the final administrative record within five days of its approval of the project.
- (i) Any dispute arising from the administrative record shall be resolved by the superior court. Unless the superior court directs otherwise, a party disputing the content of the record shall file a motion to augment the record at the time it files its initial brief.
- (j) The contents of the record of proceedings shall be as set forth in subdivision (e) of Section 21167.6.

**Section 21187.** Within 10 days of the Governor certifying an environmental leadership development project pursuant to this section, the lead agency shall, at the applicant's expense, issue a public notice in no less than 12-point type stating the following:

THE APPLICANT HAS ELECTED TO PROCEED UNDER CHAPTER 6.5 (COMMENCING WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTIONS 21185 TO 21186, INCLUSIVE, OF THE PUBLIC RESOURCES CODE. A COPY OF CHAPTER 6.5 (COMMENCING WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE IS INCLUDED BELOW.

The public notice shall be distributed by the lead agency as required for public notices issued pursuant to paragraph (3) of subdivision (b) of Section 21092.

**Section 21188.** The provisions of this chapter are severable. If any provision of this chapter or its application is held to be invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application.

**Section 21189.** Except as otherwise provided expressly in this chapter, nothing in this chapter affects the duty of any party to comply with this division.

**Section 21189.1.** If, prior to January 1, 2017, a lead agency fails to approve a project certified by the Governor pursuant to this chapter, then the certification expires and is no longer valid.

**Section 21189.2.** The Judicial Council shall report to the Legislature on or before January 1, 2017, on the effects of this chapter on the administration of justice.

**Section 21189.3.** This chapter shall remain in effect until January 1, 2017, and as of that date is repealed unless a later enacted statute extends or repeals that date.

### California Public Resources Code Section 30103

- (a) "Coastal zone" means that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less, and in developed urban areas the zone generally extends inland less than 1,000 yards. The coastal zone does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, established pursuant to Title 7.2 (commencing with Section 66600) of

## BALLOT MEASURE (continued)

the Government Code, nor any area contiguous thereto, including any river, stream, tributary, creek, or flood control or drainage channel flowing into such area.

- (b) The commission shall, within 60 days after its first meeting, prepare and adopt a detailed map, on a scale of one inch equals 24,000 inches for the coastal zone and shall file a copy of the map with the county clerk of each coastal county. The purpose of this provision is to provide greater detail than is provided by the maps identified in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division. The commission may adjust the inland boundary of the coastal zone the minimum landward distance necessary up to a maximum of 100 yards except as otherwise provided in this subdivision, or the minimum distance seaward necessary up to a maximum of 200 yards, to avoid bisecting any single lot or parcel or to conform it to readily identifiable natural or manmade features. Where a landward adjustment is requested by the local government and agreed to by the property owner, the maximum distance shall be 200 yards.

### **California Public Resources Code Section 21065**

"Project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

- (a) An activity directly undertaken by any public agency.
- (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

### **San Diego City Charter Section 6: Qualified Electors**

The qualifications of an elector at any election held in the City under the provisions of this Charter shall be the same as those prescribed by the general law of the State for the qualification of electors at General State Elections. No person shall be eligible to vote at such City election until he has conformed to the general State law governing the registration of voters.

### **San Diego City Charter Section 211: Oath of Office**

Every officer or member of a Committee, Board or of a Commission of the City shall, before entering upon the duties of his office, take and subscribe to an oath or affirmation as provided by the Constitution or General Law of the State to be filed and kept in the office of the City Clerk.

### **San Diego Municipal Code Section 112.0502: Process One**

An application for a permit, map, or other matter acted upon in accordance with Process One may be approved or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held, and a Process One decision may not be appealed except as otherwise set forth in Section 141.0418.

A statement of reasons for the proposed action as contemplated in said petition is as follows:

#### **Statement of Reasons**

Our connection to the Pacific Ocean and its beaches, bays, harbors, rivers and tributaries, and our tourism and entertainment resources, are big parts of San Diego's identity. Critically important to our economy and quality of life, these resources require responsible management in order to accommodate visitors and residents who demand access to our waterways, beautiful, first-class venues, and very best of experiences.

Tourism and entertainment both benefit from, and impact, San Diego's infrastructure and facilities, and the health of each is inextricably linked.

But our tourism- and entertainment-related facilities and infrastructure have deteriorated and are falling from lack of vision and years of neglect. This is the result of there being no single, coordinated mechanism to responsibly manage these public resources.

## BALLOT MEASURE (continued)

Our City's transient occupancy tax is far below its competitive market average for comparable major tourist destinations, contributing to a roughly \$1.7 billion facilities and infrastructure deficit throughout the City.

When businesses and visitors pay their fair share to maintain public assets, everyone benefits.

A recent report found that some competing cities' lodging taxes are much higher than the City's rate: Anaheim 17%, Seattle 16.5%, San Francisco 16.25%, and Los Angeles 15.5%. San Diego's transient occupancy tax is 10.5%, which results in delayed repairs, less maintenance, the postponing of new attractions and venues, and the loss of world admiration. We cannot allow that to continue.

Along with fair-share funding, we also need a better approach to oversight of these issues, and our valuable tourism- and entertainment-related resources, so our problems do not repeat themselves.

Requiring tourists and tourism businesses to pay their fair share, and reforming the City's overall management of its tourism- and entertainment-related resources, is a sensible, unified way to manage our tourism and entertainment economy in a responsible manner.

Date: October 26, 2015

Donna Frye

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